REPORT
OF THE
HUMAN RIGHTS COMMITTEE

Volume I

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-FIFTH SESSION
SUPPLEMENT No. 40 (A/45/40)

UNITED NATIONS

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HUMAN RIGHTS COMMITTEE

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UNITED NATIONS

New York, 1990

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

The present document contains chapters I to V and Annexes I to VIII of the Report of the Human Rights Committee. Annexes IX to XIII appear in Volume II.

ISSN 0255-2353

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[Original: English]

[4 October 1990]

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Covenant

1. As at 27 July 1990, the closing date of the thirty-ninth session of the Human Rights Committee, there were 92 States parties to the International Covenant on Civil and Political Rights and 50 States parties to the Optional Protocol to the Covenant, both of which were adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966 and opened for signature and ratification in New York on 19 December 1966. Both instruments entered into force on 23 March 1976 in accordance with the provisions of their articles 49 and 9 respectively. Also as at 27 July 1990, 27 States had made the declaration envisaged under article 41, paragraph 1, of the Covenant, which came into force on 28 March 1979. The General Assembly, by its resolution 44/128 of 15 December 1989, has adopted and opened for signature, ratification and accession the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. In accordance with the provision of its article 8, the Second Optional Protocol will enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession. As at 27 July 1990, two States had ratified the Second Optional Protocol and 16 States had signed it.

2. A list of States parties to the Covenant and to the Optional Protocol, with an indication of those which have made the declaration under article 41, paragraph 1, of the Covenant, as well as a listing of States having signed or ratified the Second Optional Protocol, are contained in annex I to the present report.

3. Reservations and other declarations have been made by a number of States parties in respect of the Covenant and/or the Optional Protocol. These reservations and other declarations are set out verbatim in document CCPR/C/2/Rev.2.

B. Sessions and agenda

4. The Human Rights Committee has held three sessions since the adoption of its last annual report. 1/ The thirty-seventh session (923rd and 950th meetings) was held at the United Nations Office at Geneva from 23 October to 10 November 1989, the thirty-eighth session (951st to 979th meetings) was held at United Nations Headquarters, New York, from 19 March to 6 April 1990 and the thirty-ninth session (980th to 1008th meetings) was held at the United Nations Office at Geneva from 9 to 27 July 1990. The agenda of the sessions are shown in annex III to the present report.

C. Membership and attendance

5. The membership remained the same as during 1989. A list of the members of the Committee, as well as of its officers, is given in annex II to the present report. The thirty-seventh session of the Committee was attended by all the members of the Committee except Messrs. Aguilar Urbina and Serrano Caldera; Mr. Mavrommatis attended only part of the session. All the members, except Mr. Mommersteeg, attended the thirty-eighth session. The thirty-ninth session was attended by all

the members of the Committee, except Messrs. Mommersteeg and Serrano Caldera; Messrs. El-Shafei, Mavrommatis and Wako attended only part of the session.

D. Working groups

6. In accordance with rules 62 and 89 of its rules of procedure, the Committee established working groups to meet before its thirty-seventh, thirty-eighth and thirty-ninth sessions.

7. The working group established under rule 89 was entrusted with the task of making recommendations to the Committee regarding communications under the Optional Protocol and of adopting, as the case may be, decisions declaring communications admissible. At the thirty-seventh session, the working group was composed of Miss Chanet and Messrs. Cooray, El Shafei, Myullerson and Prado Vallejo. It met at the United Nations Office at Geneva from 16 to 20 October 1989 and elected Miss Chanet as its Chairman/Rapporteur. At the thirty-eighth session, the working group was composed of Messrs. Ando and Fodor, Mrs. Higgins and Messrs. Prado Vallejo and Wako. It met at United Nations Headquarters, New York, from 12 to 16 March 1990 and elected Mrs. Higgins as Chairman/Rapporteur. At the thirty-ninth session the working group was composed of Messrs. Ando, Cooray, Dimitrijevic, Mavrommatis and Prado Vallejo. It met at the United Nations Office at Geneva from 2 to 6 July 1990 and elected Mr. Dimitrijevic as its Chairman/Rapporteur.

8. The working group established under rule 62 was mandated to prepare concise lists of issues concerning second and third periodic reports scheduled for consideration at the Committee's thirty-seventh, thirty-eighth and thirty-ninth sessions, and to consider any draft general comments that might be put before it. Additionally, the working group that met before the thirty-ninth session was requested to review the conclusions and recommendations contained in the study on possible long-term approaches to the supervision of existing and new instruments on human rights (A/44/668) of relevance to the activities of the Committee. At the thirty-seventh session, the working group was composed of Miss Chanet, Messrs. Dimitrijevic, Ndiaye and Wennergren. It met at the United Nations Office at Geneva from 16 to 20 October 1989 and elected Mr. Dimitrijevic as its Chairman/Rapporteur. At the thirty-eighth session, the working group was composed of Messrs. Cooray, Ndiaye, Myullerson and Wennergren. It met at United Nations Headquarters from 12 to 16 March 1990 and elected Mr. Ndiaye as its Chairman/Rapporteur. At the thirty-ninth session, the working group was composed of Messrs. Aguilar Urbina, Fodor, Ndiaye and Pocar. It met at the United Nations Office at Geneva from 2 to 6 July 1990 and elected Mr. Pocar as its Chairman/Rapporteur.

E. Other matters

Thirty-seventh session

9. The Committee held an informal exchange of views concerning the manner in which it was fulfilling its obligations under article 40, paragraph 4, of the Covenant and how the Committee's practice in that regard had developed in recent years. There was general agreement that the practice of members of the Committee in making substantive general observations at the end of the consideration of each

report - both in respect of specific points covered in the reports and on topics of a broader nature that could provide more general guidelines to States parties - was to be welcomed and had made a positive contribution to the Committee's work. Although some members suggested that the time had come for the Committee as a whole to adopt general observations at the conclusion of its consideration of each report, which would carry more weight than the observations of individual members, other members were sceptical about the feasibility and desirability of such a practice and urged the Committee to retain its current approach. It was agreed, nevertheless, that the discussion on the subject of the Committee's practices relating to the discharge of its obligations under article 40 of the Covenant had been useful and that similar exchanges of views should be held periodically.

Thirty-eighth session

10. The Committee took note of a statement by the Under-Secretary-General for Human Rights on the dramatic improvement in the international climate that had taken place in recent months, including the promising détente between the Soviet Union and the United States, elections in a number of countries in South and Central America, Namibian independence, the release of Nelson Mandela and political developments in Eastern Europe. The Committee felt that these and other improvements provided favourable opportunities for further progress in the field of human rights and that such opportunities should be exploited to the maximum.

Thirty-ninth session

11. The Committee noted that the third periodic report of Tunisia which was considered at the thirty-ninth session marked the fourth such report taken up during the period covered by this annual report (following the consideration of the third periodic report of Chile and of the USSR at the thirty-seventh and of the Federal Republic of Germany at the thirty-eighth session). Members were of the view that although the experience thus far in applying the methodology for considering third periodic reports adopted at the thirty-fifth session 2/ was limited, it nevertheless provided an encouraging indication that the procedure being followed by the Committee in this respect would be helpful in further strengthening and making more effective its dialogue with the States parties. The Committee reaffirmed its intention to develop further guidelines, if necessary, after it had had sufficient experience in considering third periodic reports.

12. At its 1002nd meeting, the Committee decided to adopt certain measures to follow up on its views in communications under the Optional Protocol to the Covenant (see paras. 632-635 and annex XI). Consequently, it amended its guidelines for the submission of initial and periodic reports by adding a new paragraph, which reads as follows:

> "When a State party to the Covenant is also a party to the Optional Protocol, and if in the period under review in the Report the Committee has issued Views finding that the State party has violated provisions of the Covenant, the Report should include a Section explaining what action has been taken relating to the communication concerned. In particular, the State party should indicate what remedy it has afforded the author of the communication whose rights the Committee found to have been violated."

The text of the revised guidelines reflecting the above-mentioned addition will be issued separately.

13. At the weekend following the first week of the Committee's thirty-ninth session, a number of members of the Committee participated in an informal workshop in Geneva, organized by the Norwegian Institute of Human Rights, devoted to a review of the Committee's current practice in relation to reporting under article 40 of the Covenant and to the consideration of suggestions for possible improvements. A considerable number of ideas and suggestions emerged from the discussions and were later briefly considered by the Committee as a whole in conjunction with several other ideas which the members of the Committee had expressed from time to time. At its 1003rd meeting the Committee asked its working group on article 40, which was to meet prior to the fortieth session, to give those suggestions more detailed consideration with a view to making recommendations to the Committee, if deemed appropriate.

F. Publicity for the work of the Committee

14. The Chairman and members of the Bureau held a press briefing during the Committee's thirty-seventh session, in October 1989 in Geneva. The briefing was exceptionally well attended, reflecting the growing interest in the work of the Committee, and in human rights questions more generally, by the media. At its thirty-eighth session, held at Headquarters in March 1990, members of the Committee participated in a workshop with representatives of a number of New York-based non-governmental organizations which provided an opportunity to inform the latter in detail about the Committee's mandate and activities and for a useful exchange of views.

G. Venue of future sessions of the Committee

15. In confirming at its thirty-sixth session, held in July 1989, the calendar of its future meetings during the biennium 1990-1991 and the venues of those meetings, the Committee drew attention to the continued necessity of holding at least one of its sessions each year in New York. This was dictated, in the view of the Committee, by a number of important considerations relating to the effective discharge of its mandate, which were summarized in the Committee's annual report to the forty-fourth session of the General Assembly. 3/ The Committee was, therefore, deeply distressed to learn, subsequently, of a recommendation that had been made by the Advisory Committee on Administrative and Budgetary Questions, 4/ which, in effect, would have deprived the Committee, henceforth, of that possibility.

16. At its thirty-seventh session, in October 1989, the Committee held an extensive discussion about this alarming development, during the course of which members were unanimous in once again stressing the importance of maintaining the New York venue for one of the Committee's annual sessions and in urging that no change be made in the Committee's practice in that respect. The Committee requested that its views in this regard should be conveyed by its Chairman to the attention of the Chairman of the Fifth Committee, as well as the Chairman of the Third Committee, of the General Assembly at its forty-fourth session. The text of the Chairman's letter, setting forth the Committee's detailed arguments, is contained in annex VII A.

17. At its thirty-eighth session held in March 1990, the Committee expressed deep appreciation to the General Assembly for its decision, reflected in resolution 44/201 B, section III, of 21 December 1989, to allow the Committee to

continue to hold its spring sessions in New York. The Committee took note of the General Assembly's specific requests contained in that resolution and agreed to revert to the matter at its thirty-ninth session.

18. At its thirty-ninth session, held in July 1990, the Committee gave careful consideration to the request of the General Assembly, contained in resolution 44/201 B, section III, that when deciding on the venue of its future sessions it take fully into account the recommendations contained in paragraphs 23.5 and 23.6 of the report of the Advisory Committee, 4/ including the need for optimum use of resources, as well as the provisions of General Assembly resolution 40/243 of 18 December 1985, and article 37 of the International Covenant on Civil and Political Rights. In accordance with the further request in that resolution that the Committee should report on this matter to the General Assembly at its forty-fifth session through the Committee on Conferences, the Human Rights Committee agreed that its views should be conveyed by its Chairman to the Chairman of the Committee on Conferences. The text of the Chairman's letter is contained in annex VII B.

H. Adoption of the report

19. At its 1006th and 1008th meetings, held on 26 and 27 July 1990, the Committee considered the draft of its fourteenth annual report, covering its activities at the thirty-seventh, thirty-eighth and thirty-ninth sessions, held in 1989 and 1990. The report, as amended in the course of the discussion, was unanimously adopted by the Committee.

II. ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-FOURTH SESSION

20. At its 973rd meeting, held on 4 April 1990, the Human Rights Committee considered the agenda item in the light of the relevant summary records of the Third Committee and General Assembly resolutions 44/128, 44/129, 44/130, 44/135 and 44/156 of 15 December 1989. The Committee took note with special appreciation of the encouraging remarks made by delegations at the General Assembly concerning its work.

21. In discussing the relevant resolutions adopted by the General Assembly at its forty-fourth session, the Committee noted that some of them reflected important progress in the development of international human rights norms that were of special interest to it. The Committee welcomed, in particular, the adoption, by resolution 44/128, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. It was noted that the new Optional Protocol served as a normative complement to article 6 of the Covenant and that after its entry into force those States that had ratified it would need to include, in their reports submitted under article 40 of the Covenant, information regarding their compliance with its provisions. The Committee stressed that the practice of adopting protocols to existing international instruments should be encouraged. The Committee also noted with satisfaction that the General Assembly, by resolution 44/25 of 20 November 1989, had adopted the Convention on the Rights of the Child.

22. With reference to resolution 44/129, the Committee took careful note of the emphasis placed therein on the need for States parties to provide the fullest possible information during states of emergency. Since the Committee had not yet considered how compliance with the provisions of international human rights instruments during states of emergency could be monitored, apart from its current practice of addressing the matter in the context of the standard procedure for considering periodic reports, it was agreed that there should be a substantive discussion on this topic by the Committee at one of its future meetings. It was also noted that a project to establish a data base on states of emergency world wide, which would be made accessible to members of all the treaty bodies, was under consideration by a university.

23. With reference to the call in resolution 44/130 for more publicity to be given to the work of the Human Rights Committee, the Committee noted with satisfaction that the second volume of the Committee's Selected Decisions under the Optional Protocol, covering the seventeenth to thirty-second sessions, had been published and expressed the hope that further efforts would be made to bring up to date the publication of the Committee's Official Records. The Committee also welcomed indications from various sources that the Committee's work under the Optional Protocol had become more widely known in judicial circles in the past two years and that the emerging jurisprudence of the Committee's decisions was being increasingly appreciated.

24. With regard to resolution 44/135, relating to the effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights, the Committee noted with satisfaction that, pursuant to that resolution, the 3rd meeting of the persons chairing the various human rights treaty bodies was to be convened in October 1990. In connection with that meeting, and pursuant to Commission on Human Rights

resolution 1990/25, the Committee reviewed the conclusions and recommendations contained in the study on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations human rights instruments (A/44/668), and transmitted its comments and suggestions thereon to the Secretary-General (see annex VIII).

25. The Committee also noted with great appreciation that in resolution 44/135 the General Assembly had recommended that adequate resources be provided to the Centre for Human Rights in its work of assisting the treaty bodies in their operations. In that connection, the Committee expressed its strong concurrence with the views and recommendations contained in the Secretary-General's report to the first regular session in 1990 of the Economic and Social Council regarding logistical and human resources support for the increasing activities of the Centre for Human Rights. In addition, the Committee concurred with the recommendation of the Task Force on Computerization and expressed the hope that the necessary budgetary and extrabudgetary resources would be made available in a timely manner so that the process of computerizing the work of the treaty monitoring bodies could be initiated without delay.

26. With reference to General Assembly resolution 44/156, the Committee was of the view that convening a world conference on human rights could be helpful not only in promoting human rights but also in generating additional resources for the protection of human rights. It could also serve as an important forum for discussing persistent violations of human rights and provide a possibility for applying pressure to certain régimes.

III. REPORTS BY STATES PARTIES SUBMITTED UNDER ARTICLE 40 OF THE COVENANT

A. Submission of reports

27. States parties have undertaken to submit reports in accordance with article 40, paragraph 1, of the International Covenant on Civil and Political Rights within one year of the entry into force of the Covenant for the States parties concerned and thereafter whenever the Committee so requests. In order to assist States parties in submitting the reports required under article 40, paragraph 1 (a) of the Covenant, the Human Rights Committee, at its second session, approved general guidelines regarding the form and content of initial reports. 5/

28. Furthermore, in accordance with article 40, paragraph 1 (b) of the Covenant, the Committee at its thirteenth session adopted a decision on periodicity requiring States parties to submit subsequent reports to the Committee every five years. 6/ At the same session, the Committee adopted guidelines regarding the form and content of periodic reports from States parties under article 40, paragraph 1 (b) of the Covenant. 7/

29. At each of its sessions during the reporting period, the Committee was informed of and considered the status of the submission of reports (see annex IV).

30. The action taken, information received and relevant issues placed before the Committee during the reporting period (thirty-seventh to thirty-ninth sessions) are summarized in paragraphs 31 to 36 below.

Thirty-seventh session

31. With regard to reports submitted since the thirty-sixth session, the Committee was informed that the initial report of Saint Vincent and the Grenadines and the third periodic report of Finland had been received.

32. The Committee decided to send reminders to the Governments of Gabon, Equatorial Guinea, the Niger and the Sudan, whose initial reports were overdue. In addition, the Committee decided to send reminders to the Governments of the following States parties whose second periodic reports were overdue: Afghanistan, Austria, Bulgaria, Central African Republic, Cyprus, Democratic People's Republic of Korea, Egypt, El Salvador, Gabon, Gambia, Guinea, Guyana, Iceland, Iran (Islamic Republic of), Jamaica, Jordan, Kenya, Lebanon, Libyan Arab Jamarihiya, Madagascar, Mali, Morocco, Netherlands (with respect to the Netherlands Antilles), New Zealand (with respect to the Cook Islands), Peru, Sri Lanka, Suriname, Syrian Arab Republic, United Republic of Tanzania and Venezuela; and to the Governments of Bulgaria, the Byelorussian Soviet Socialist Republic, Cyprus, Ecuador, Iran (Islamic Republic of), Lebanon, the Libyan Arab Jamahiriya, Madagascar, Poland, Romania, the Syrian Arab Republic, the Ukrainian Soviet Socialist Republic and Yugoslavia, whose third periodic reports were overdue.

Thirty-eighth session

33. The Committee was informed that the second periodic report of Jordan and third periodic reports of Sweden, the Ukrainian Soviet Socialist Republic and the United Kingdom of Great Britain and Northern Ireland had been received.

34. In view of the growing number of outstanding State party reports, the Committee agreed that members of the Bureau should meet in New York with the permanent representatives of all States parties whose initial reports were overdue as well as with the permanent representatives of States parties whose second or third periodic reports had been overdue for two years or more. Accordingly, contact was made with the permanent representatives of Austria, Bulgaria, Cyprus, the Democratic People's Republic of Korea, Egypt, Gabon, the Gambia, Guyana, Iceland, Iran (Islamic Republic of), Jamaica, Kenya, the Libyan Arab Jamahiriya, Madagascar, Mali, Morocco, Peru, Sri Lanka, Sudan, Suriname, the Syrian Arab Republic, the United Republic of Tanzania, Venezuela and Yugoslavia, who agreed to convey the Committee's concerns to their Governments. It was not possible to establish contact with the permanent representatives of Equatorial Guinea and the Niger.

35. In addition, the Committee decided to send reminders to all States whose initial reports or second or third periodic reports should have been submitted before the end of the thirty-eighth session. Initial reports were overdue from Gabon, Equatorial Guinea, the Niger and the Sudan; second periodic reports were overdue from Afghanistan, Austria, Belgium, Bulgaria, the Central African Republic, Congo, Cyprus, the Democratic People's Republic of Korea, Egypt, El Salvador, Gabon, Gambia, Guinea, Guyana, Iceland, Iran (Islamic Republic of), Jamaica, Kenya, Lebanon, the Libyan Arab Jamarihiya, Luxembourg, Madagascar, Mali, the Netherlands (with respect to the Netherlands Antilles), New Zealand (with respect to the Cook Islands), Peru, Suriname, the Syrian Arab Republic, the United Republic of Tanzania and Venezuela; and third periodic reports were overdue from Bulgaria, the Byelorussian Soviet Socialist Republic, Cyprus, Ecuador, Iran (Islamic Republic of), Iraq, Lebanon, the Libyan Arab Jamahiriya, Madagascar, Mongolia, New Zealand, Poland, Romania, Senegal, the Syrian Arab Republic, Trinidad and Tobago, Uruguay and Yugoslavia.

Thirty-ninth session

36. The Committee was informed that the second periodic reports of Madagascar, Morocco and Sri Lanka, as well as the third periodic reports of the Byelorussian Soviet Socialist Republic and Ecuador had been received.

B. Consideration of reports

37. During its thirty-seventh, thirty-eighth and thirty-ninth sessions the Committee considered the initial reports of Argentina, Democratic Yemen, Saint Vincent and the Grenadines, San Marino and Viet Nam, as well as the second periodic reports of Costa Rica, the Dominican Republic, Nicaragua, Portugal and Zaire and the third periodic reports of Chile, the Federal Republic of Germany, Tunisia and the Union of Soviet Socialist Republics. The status of reports considered during the period under review and reports still pending consideration is indicated in annex V of the present report.

38. The following sections relating to States parties are arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of reports at its thirty-seventh, thirty-eighth and thirty-ninth sessions. These sections are only summaries, based on the summary records of the meetings at which the reports were considered by the Committee. Fuller information is contained in the reports and additional information submitted by the States parties concerned 8/ and in the summary records referred to.

Democratic Yemen 9/

39. The Committee considered the initial report of the People's Democratic Republic of Yemen (CCPR/C/50/Add.2) at its 927th and 932nd meetings, held on 25 and 30 October 1989 (CCPR/C/SR.927 and SR.932). The report was introduced by the representative of the State party, who drew attention to his Government's decision, adopted since the report's preparation, to make an overall assessment of the country's economic and political evolution since independence, with a view to the preparation of reforms that would eliminate a number of shortcomings. In that process all of the Committee's comments would be given very serious consideration. A number of measures had already been taken recently to provide sounder guarantees for the human rights of all citizens and to generalize democracy, including the promulgation of a new Electoral Act (Act 9/1989) that provided for election of both local people's councils and the People's Supreme Council by direct universal suffrage. A new Press Law, which would guarantee freedom of expression and opinion, was also receiving active consideration.

40. Members of the Committee congratulated the Government of the People's Democratic Republic of Yemen for having ratified the Covenant so soon after the dramatic events of 1986 as well as for the timely submission of the initial report. This provided a positive indication of the Government's determination to ensure that the effective enjoyment of the rights set out in the Covenant became a reality in the country. While the report contained only scant information about the actual application of the Covenant and about the difficulties encountered by the State in fulfilling its human rights obligations - and therefore did not correspond completely to the Committee's guidelines - it nonetheless provided a useful basis for dialogue.

41. In connection with article 2 of the Covenant, members of the Committee wished to receive additional information concerning the status of the Covenant under domestic law, asking in particular whether it took precedence over other laws; whether it had been incorporated into national legislation; and whether it could be directly invoked by individuals before the courts and, if so, whether it had actually been so invoked and with what results. It was also asked whether the authorities had taken any measures to ensure that the text of the Covenant was disseminated broadly, not merely to the relevant bodies and officials but also among the people at large. Noting that article 35 of the Constitution did not include political or other opinion, sex, colour, property or national origin among the prohibited grounds for discrimination, as provided in article 2 of the Covenant, members wished to know whether such omissions were deliberate and whether this had led to any undesirable consequences. They also wished to receive information about the treatment and status of aliens in the country, particularly in so far as their treatment was different from that of citizens.

42. Members of the Committee also asked whether, pursuant to article 49 of the Constitution, victims of human rights violations, including those persons whose rights were violated during the grave disturbances in January 1986, were able, as a practical matter, to apply to the courts for compensation and the restoration of their rights. Referring to articles 221 and 222 of the Penal Code, it was also questioned whether the penalty of dismissal from office, stipulated therein for abuse of power by a public official, was sufficient punishment in cases where serious offences had been committed.

43. With reference to article 3 of the Covenant, members of the Committee noted that the report dealt only briefly with the question of the equality of the sexes and wished to receive information concerning specific legislative and practical measures that had been taken to ensure such equality in practice.

44. Regarding article 4 of the Covenant, members of the Committee wished to receive additional information on the legislative aspects of a declaration of general mobilization, particularly any legislation that had been adopted by the People's Supreme Council to regulate such a declaration and to ensure that any derogations from obligations under the Covenant were in strict conformity with the provisions of article 4 thereof.

45. In connection with article 6 of the Covenant, members of the Committee wished to know what measures had been taken to prevent the security forces from arbitrarily killing persons; what facilities and procedures had been established to investigate any such acts thoroughly; whether any members of the security forces, the army, or the police had actually been implicated in unlawful homicides and, if so, whether any such instances had been investigated and the perpetrators brought to justice; and whether the Military Penal Code and the Military Code of Penal Procedure had been published. Concerning the death penalty, members were of the view that the number of crimes subject to capital punishment, particularly offences against public property or the national economy, was too high to be consistent with article 6, paragraph 2 of the Covenant. Clarification was also requested of such vaguely defined crimes for which the death penalty could be imposed as offences against "peace, humanity or human rights" or war crimes "motivated by hostility towards the Republic". Specific questions were asked as to whether the death penalty was also applicable to minors under 18 years of age; and whether it was true that the 35 death sentences imposed during the trials following the events of 1986 had been ratified by the Presidential Council prior to the expiration of the legal period for appeal and that the 11 persons who were actually executed following these trials had not been given an opportunity to see their families or lawyers before the executions took place.

46. With reference to articles 7 and 10 of the Covenant, members of the Committee wished to know whether torture was prohibited by law in all circumstances and not merely "during interrogation"; what procedures had been established for investigating allegations of ill-treatment or the death of detainees; what remedies were available to detainees who were subjected to maltreatment; whether it was true that political prisoners were sometimes maltreated or tortured in certain prisons and detention centres and had even died as a consequence of such ill-treatment and, if so, whether measures had been taken to prevent such abuses and to bring the perpetrators to justice; and whether it was correct, as alleged by some human rights groups, that the bodies of certain detainees who had died in prison had not been returned to their families and, if so, what the reasons were for the failure to release these bodies to the families.

47. Regarding article 9 of the Covenant, members of the Committee wondered, in view of the provisions contained in article 276, paragraph 1, of the Code of Penal Procedure, whether, contrary to article 9, paragraph 3 of the Covenant, pre-trial detention was not the rule in the People's Democratic Republic of Yemen rather than the exception; and whether resort to lengthy pre-trial detention, extending for as long as six months, was compatible with that same provision of the Covenant. Members also wished to know whether legal proceedings had ever been instituted against public officials for having made arbitrary and illegal arrests; and whether

the same provisions of criminal law and criminal procedure were applicable to political and non-political detainees and were applied, in fact, in the same way.

48. In connection with articles 12 and 13 of the Covenant, members of the Committee wished to receive additional information concerning the laws regulating the right to enter and leave the country and the right to emigrate and concerning any restrictions thereon; and about the present situation in respect of travel between the two Yemens.

49. With regard to article 14 of the Covenant, members of the Committee wished to receive additional information concerning legal provisions guaranteeing the independence of the judiciary and of lawyers; the relationship between the Supreme Court and the People's Supreme Council; laws regulating the provision of free legal assistance; and about the powers of the judiciary in cases where arrests had been made on the orders of the Ministry of Interior or the Ministry of Defence. Members also wished to know at what stage of the procedure a detainee was entitled to see a lawyer; how judges were appointed and whether membership in the single party was a prerequisite for appointment; whether the presidents of courts of first instance were elected by local people's councils, as stipulated by the Constitution, or were in fact appointed; whether any judges had been dismissed following the events of 1986 for "betrayal of trust"; and whether the removal of judges was common practice; how the Office of the Public Prosecutor was organized and whether it contained any special unit charged with investigating human rights violations and initiating proceedings against public officials accused of abusing their power; whether there was any office or public institution with which citizens could lodge complaints alleging the infringement of their rights by the public authorities; and whether the principle of the presumption of innocence was respected and its observance guaranteed in practice.

50. Concerning article 17 of the Covenant, members of the Committee wished to receive additional information about the protection of the right to privacy, from both the legal and practical standpoint, and requested clarification of reports that people's homes were sometimes confiscated.

51. With reference to article 18 of the Covenant, members of the Committee wished to know what religions, other than Islam, were practised in Democratic Yemen; what legislative or other measures had been adopted to ensure non-discrimination as between Islam and such other religions; what criteria and procedures had been established for the recognition and registration of such other religions; whether non-Muslims or non-believers in any religion had access to the civil service and public office without discrimination; and whether any difficulties were being encountered in applying, on a day-to-day basis, the modern legislation that had been adopted by the State party, which in some respects might differ from the provisions of Islamic law.

52. In connection with article 19 of the Covenant, members of the Committee expressed concern about the compatibility of articles 108, 109, 113 and 117 of the Penal Code with article 19 of the Covenant, noting that although there was no hierarchy among the various rights set out in the Covenant, article 19 played a key role in the exercise of most of the other rights. Article 113 of the Penal Code, which prohibited citizens from having contact with foreigners except through official channels, gave rise to special expressions of concern and members wondered whether that article was actually being enforced. Members wished to know, in particular, whether citizens had the right to express views that were at variance

with those of the Government and whether that right was respected in practice; what role the Ministry of Information played in controlling and censoring the media and publishing houses and what reasons could be invoked for restricting freedom of expression; and how the term "democratic legality", as contained in articles 125 and 126 of the Constitution, was interpreted and how the offence of spreading rumours about the "national democratic system" was defined. Referring to the introductory statement of the representative of the State party, members also requested additional information concerning the substance of the planned reforms relating to freedom of expression and freedom of the press and about the anticipated timing of such reforms.

53. Regarding articles 21 and 22 of the Covenant, members of the Committee wished to receive information concerning laws or regulations that governed the holding of peaceful public assemblies and demonstrations and about rules and regulations governing associations other than trade unions. As to the exercise of trade union freedoms, members wished to know, in particular, whether or not the General Federation of Trade Unions was composed of local unions that had been independently established by workers and whether trade unions outside the general federation were allowed.

54. With regard to article 23 of the Covenant, members of the Committee wished to receive additional information concerning measures that have been taken to ensure, in general, the equality of the sexes and concerning certain practices relating to the rights of women during marriage and at its dissolution.

55. With reference to article 25 of the Covenant, members of the Committee wished to know whether the special position of the Socialist Party within the political system, under article 3 of the Constitution, implied any restrictions in respect of the establishment of other political parties; whether membership of the Socialist Party was open to all citizens; and whether there were any differences between members and non-members of that party in respect of such matters as access to public office and equal opportunity for employment and advancement in the public service.

56. Noting that the report contained no information concerning the application of article 27, members requested information concerning the situation of minorities within the country, if any.

57. Replying to questions raised by members of the Committee, the representative of the State party stated that although the lack of reference material made it impossible to reply fully to the questions that had been raised, all of the Committee's questions and observations would be duly referred to the competent authorities of Democratic Yemen and he hoped that his country's next report would be more detailed and comprehensive.

58. By way of a general response, before addressing the various questions individually, the representative stated that the effective enjoyment of human rights and fundamental freedoms largely depended on social conditions at a particular time. There was a considerable difference between a State's recognition of human rights and intention to promote them, on the one hand, and their effective enjoyment, on the other, which was primarily contingent on public awareness of such rights and freedoms and on general development. Democratic Yemen was a relatively young State, established in 1967 in a region formerly characterized by tribal relations and traditions, but lacking any genuine form of legal or judicial

organization. The new régime had been confronted with a difficult situation, exacerbated by its shortage of resources and the threat of external intervention, all of which had given rise to great challenges in many areas, including law enforcement and human rights.

59. Referring to questions relating to the status of the Covenant within his country's legal system and the extent to which the Covenant offered legal protection, the representative said that the legislative authorities were well aware of the shortcomings of the Constitution in that respect and were endeavouring to give the Covenant the force of national legislation.

60. Referring to questions relating to equality and non-discrimination, the representative noted that while the formulation of the relevant provisions in article 35 of the Constitution and in other statutes such as the Civil Code and the Code of Civil Procedure differed slightly from that contained in article 2, paragraph 1 of the Covenant, there could be no doubt about the legislature's clear intention to ensure full equality and to put an end to all forms of discrimination. In particular, as far as aliens were concerned, article 25 of the Civil Code stipulated that foreign nationals and stateless persons enjoyed the same civil rights as those granted to citizens except in respect of the right to own property, which was subjected to certain conditions established by law.

61. With regard to questions relating to the death penalty, the representative of the State party drew attention to article 65 of the Penal Code, which stipulated that the death penalty was to be imposed only for the most serious crimes and was to be carried out only in exceptional cases, where the protection of society so required and where a prison sentence offered no hope of genuine reform. Death sentences required the approval of the Praesidium of the People's Supreme Council, which could grant a pardon or a commutation of the sentence, and could not be imposed on a minor under 18 years of age (who benefited from an automatic commutation under article 30 of the Penal Code to a maximum sentence of from 3 to 10 years of imprisonment) or carried out on a pregnant woman. The procedures to be followed prior to the execution of a death sentence were set out in article 22 of the Prison Code. The legislation in force at the time of the trial of persons who had been involved in the events of 13 January 1986 did not provide a 30-day delay between the time of sentencing and approval of the sentence by the Praesidium. The five persons who were actually executed had been given an opportunity for a family visit before the death sentence was carried out.

62. With reference to article 14 of the Covenant, the representative stated that the legislation in force contained a number of guarantees for the independence of the judiciary, including the prohibition of interference in its work and its obligation to be guided solely by the law. Judges were elected for a term of five years; at the governorate level they were elected by the local councils. This was one of the areas being examined under the current review with a view to introducing eventual reforms. Legal aid was guaranteed under the Constitution to all persons who could not afford the services of a lawyer. A person in such a situation who faced criminal charges could select his own lawyer, whose fees would be paid by the State.

63. The Constitution did not provide for the possibility of setting up special courts. Since 1978 there had been a unified legal system centred on the Supreme Court of the Republic. The Supreme Court consisted of three sections, namely a civil section, a criminal section and a military section, that supervised courts

with jurisdiction over military bodies. Each section applied a distinct body of laws, but a consolidated Penal Code to be finalized in 1990 would eventually cover all three areas.

64. Regarding articles 12 and 13 of the Covenant, the representative noted that entry into and departure from Democratic Yemen were governed by Act No. 28 of 1969. Freedom of movement between Democratic Yemen and the Yemen Arab Republic was guaranteed and nationals of the two countries who wished to cross the border could do so merely by presenting their identity cards.

65. Freedom of religion and freedom of expression were both guaranteed under the Constitution. The State did not interfere in religious affairs and internal legislation was not influenced by Islamic law. Consideration was being given currently to broadening the scope of the right to freedom of expression and to the enactment of new legislation in connection with the proposed establishment of some additional newspapers.

66. In reply to questions raised by members of the Committee concerning article 25 of the Covenant, the representative of the State party noted the stipulation, under article 3 of the Constitution, that the Party was to lead the State and society.

General observations

67. Members of the Committee thanked the delegation of the State party for its clear and frank responses to the questions that had been raised and expressed satisfaction with the fact that a constructive dialogue between the Government of Democratic Yemen and the Committee had been initiated. The Government's willingness to co-operate with the Committee was evident as was its desire to move forward with the adoption of policies and practices that promoted the enjoyment of human rights.

68. While the delegation's replies had given the Committee a better understanding of the situation and provided a clearer picture of the problems, members of the Committee considered that many significant problems, both of law and of practice, remained to be addressed. They made extensive comments and suggestions in this regard, noting, *inter alia*, that questions remained concerning the status of the Covenant under domestic law in situations in which it conflicted with the Constitution or ordinary law; non-discrimination, especially in respect of political opinion; the actual application of the principle of equality of rights between men and women; the right to life and the application of the death penalty; the conditions of arrest and detention; torture and ill-treatment of political prisoners; the independence of the judiciary; the probable inconsistency between certain articles of the Penal Code and articles of the Covenant, notably articles 18 and 19; the prohibition of contacts with foreigners; freedom of assembly and association; and the status of minorities. They welcomed the assurance that the Committee's comments would be transmitted to the Government of the People's Democratic Republic of Yemen and expressed the hope that in its next report the State party would be in a position to inform the Committee that its comments had been taken into account and acted upon and that the enjoyment of human rights by the people of Democratic Yemen had been enhanced.

69. The representative of the State party reiterated that all the comments made by members of the Committee would be conveyed to the competent bodies. The next report would no doubt be fuller and would not only contain information on

administrative, legislative and other aspects, but also statistics and other information with respect to the enjoyment of human rights in practice. He thanked all members of the Committee for their comments and kind words about his country and wished them every success in their task.

70. The Chairman once again expressed the Committee's appreciation for the State party's commitment to the enjoyment of human rights by the people of Democratic Yemen. Development and human rights went hand in hand and could not be separated. The problem of under-development could not be advanced as an excuse for inadequate enjoyment of human rights, and no development was worthy of the name unless it was accompanied by the protection and promotion of human rights. It had also emerged from questions raised by members of the Committee that there was a great need for dissemination of information concerning the Covenant and the obligations undertaken by the country, not only among officials and decision-making organs but also among the people, who were entitled to know their rights.

71. In conclusion, the Chairman expressed the Committee's good wishes to the Government and people of Democratic Yemen and thanked the delegation for assisting the Committee in performing its duty under the Covenant.

Union of Soviet Socialist Republics

72. The Committee considered the third periodic report of the Union of Soviet Socialist Republics (CCPR/C/52/Add.2 and 6) at its 928th to 931st meetings on 26 and 27 October 1989 (CCPR/C/SR.928-SR.931).

73. The report was introduced by the representative of the State party, who noted that important changes bearing on human rights had occurred since the preparation of the report. As part of the extensive reforms of the political system that were under way citizens now had the chance, through genuinely democratic elections, to select candidates who would protect their rights and interests. Improvements had also been made guaranteeing genuine self-determination to peoples living within the Soviet Union. One of the main changes had been the decentralization of State power by expanding the rights and responsibilities, particularly in the economic field, of the Union Republics and of the autonomous regions, and also of other groups in the country. Draft legislation dealing with such critical matters as private property and land ownership, designed to foster economic independence and initiative both of individuals and of organizations, was also under active consideration.

74. The lack of effective machinery for the full realization of civil and political rights was a matter of major concern to the Government. Draft legislation concerning the right to enter and leave the country and relating to the freedom of the press and other mass media had already been submitted to the Supreme Soviet. Legislation concerning the right of association and freedom of conscience and religion was in preparation and measures were also being taken in the field of judicial reform. In the latter regard, legislation on the status of the courts had already been enacted, with a view to guaranteeing the independence of the judiciary, and article 70 of the Criminal Code had been repealed.

Constitutional and legal framework within which the Covenant is implemented

75. With regard to that issue, members of the Committee wished to receive clarification of the institutional standing and the composition of the Constitutional Review Committee of the USSR and inquired whether it had already begun its activities; whether it would consider matters such as the consistency and compatibility of legislation with regard to the Covenant; and how its proposed role tied in with the Procurator's role in overseeing the observance of human rights. In connection with legislation relating to procedures for appealing to the courts in respect of illegal acts by officials that encroached on citizens' rights, members wished to know the precise meaning of the term "illegal acts"; what the procedures were for lodging appeals against administrative decisions; whether citizens had any recourse against actions taken to "guarantee State security"; and whether the Procurator could intervene on his own initiative or only where a complaint had been lodged. They also asked what the rules were for holding referendums; whether they could be initiated by individuals; and whether any such referendums had been held over the past three years. In the latter regard, one member drew attention to the need to reconcile the expression of the will of the people with actions that Governments were obliged to take to ensure observance of international norms.

76. Observing that momentous changes had taken place in the country within the framework of the new policy of *perestroika* and that the current legal reforms appeared to be initiated by many different bodies in the Soviet Union, members requested clarification of the status of some of those bodies and of the legislation enacted by them. They asked, in particular, which body was responsible for final refinements and amendments to legislation; what the roles were of the house standing commissions and committees of the Supreme Soviet; and whether the decrees of the Central Committee of the Communist Party had the force of law. Clarification was also requested as to whether the Covenant's provisions could be directly invoked before the courts and what the formal procedure was for checking the compatibility of laws with the Constitution and the country's international obligations. Information was also sought concerning the nature and activities of private groups or associations dealing with human rights issues and about measures for the promotion of greater public awareness of the provisions of the Covenant. Members also wished to know whether the Government intended to make the declaration provided for in article 41 of the Covenant and to ratify the Optional Protocol to the Covenant.

77. In his reply to the questions raised by members of the Committee, the representative of the State party said that the Constitutional Review Committee was expected to be established by the Congress of People's Deputies at its 1989 meeting. Members of the Committee were to be elected from among political and legal specialists and experts for a period of 10 years. In addition to the Chairman and Vice-Chairman, it was to have 21 members, of whom 15 were to represent the individual Union Republics. Its task would be to determine the constitutionality of laws and regulations adopted by the legislative and standard-setting bodies. If it discovered any incompatibility of legislation with the Constitution it would inform the body concerned that it must amend the legislation in question. Such a ruling would have a suspensive effect. While the task of monitoring the conformity of laws with international instruments had not yet been expressly provided for, the Committee would not fail to take on that task. The Constitutional Review Committee would be charged with monitoring State

law-making, whereas the Procurator's Office was responsible for ensuring that laws were respected. Thus, the respective powers of the two organs were sensibly distributed and would not overlap.

78. Referring to questions raised in connection with the 1987 Act relating to the procedure for appealing to the courts in respect of illegal acts by officials, the representative explained that since the Act did not deal with complaints against decisions by collegial bodies work was under way on a new law that would enable citizens to appeal against illegal acts by officials, whether acting as individuals or as members of collective bodies. The definition of "illegal acts" was fairly broad and, in general, a citizen could complain to the courts about any illegal acts committed by an official which were not dealt with under other procedures. Citizens were free to lodge their complaints either through the administrative tribunals or the courts but complaints against the higher organs of the State or Party were dealt with only by the courts. Regulation No. 77, issued by the General Procurator on 13 November 1988, had revolutionized the way in which complaints from citizens were dealt with, particularly complaints concerning illegal decisions by the courts themselves. Trade union committees could also be approached by citizens to uphold their rights. Many of the Supreme Soviet commissions also played an important role in improving general respect for human rights.

79. Responding to questions relating to the holding of referendums in the Soviet Union, the representative noted that a draft law on the subject was currently under preparation. Only local referendums were carried out at present but consideration was being given to the possibility of nation-wide referendums being called by the Congress of People's Deputies and even by popular initiative. However, the necessity to protect minority groups had to be borne in mind and it was also essential to educate the people who, for many years, had taken no direct part in political decision-making. Accordingly, it was planned to introduce referendums initially only at republic and regional levels concerning such issues as atomic energy or the environment, in order to familiarize people with the process. No referendums had been held as yet but the process of "nation-wide discussion" of major laws at the drafting stage had become more widespread.

80. With regard to the progress of glasnost, the representative of the State party drew attention, inter alia, to the fact that the way in which bills were adopted had been changed from block voting by a show of hands to a two-stage procedure. Bills were now first studied by a commission, which then transmitted them to the Supreme Soviet. Many variants and amendments were put forward during the second reading of draft bills and the wording was often changed, so much so that the original bill was hardly recognizable. It was also particularly noteworthy that the status of decisions taken by the Central Committee of the Party, which had previously been issued jointly with the Council of Ministers and had the force of law, would be changed and the Central Committee's decisions in future would no longer have normative status.

81. Responding to questions relating to the status of the Covenant in internal law, the representative emphasized that Soviet Civil Law was based on the idea that, in the event of a discrepancy between national legislation and the provisions of international instruments to which the Soviet Union was party, the latter should prevail. A law was being drafted to incorporate international treaties ratified by the USSR into domestic legislation.

82. Turning to questions relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol, the representative noted that while legal reviews contained articles and commentaries on both Covenants, there was a need to publicize them on a wide scale. A compendium of all international instruments on human rights was being prepared as well as a teaching syllabus covering the Covenant. Moreover, the summary records of the meetings at which the Committee studied the Union of Soviet Socialist Republic's third periodic report would be widely publicized throughout the country.

Self-determination

83. With reference to that issue, members of the Committee wished to receive information on any factors and difficulties affecting the implementation of article 1 of the Covenant, in particular in view of the statement in paragraph 39 of the report that "undesirable phenomena and distortions have occurred" in the sphere of national relationships and in the light of the various interpretations of article 72 of the Constitution. They also asked for specific examples of measures taken to provide opportunities for meeting national cultural aspirations, in the context referred to in paragraph 40 of the report. In addition, it was asked what differences there were between sovereign republics and other territorial units; how a territory could change its status to that of a republic or autonomous region; and what were the functions of the Commission for Relations Between Nationalities.

84. Responding to questions raised by members of the Committee, the representative of the State party underscored the sensitivity of the nationality problem in his country and noted that relations between ethnic groups had deteriorated for reasons connected with a worsening of living conditions. Additionally, national groups had suddenly grown concerned at the gradual loss of their cultural identity, and resentment over the deportation during the Stalinist period of even entire national groups had also reappeared. While the violent clashes between Azerbaijan and Armenia, the tension in the Nagorno-Karabakh area, the tragic events in Georgia and the many problems in the Baltic Republics were very worrying, the authorities hoped that the passage of a law on ownership that would give title deeds to national groups over their national resources would represent a first step towards a solution. He emphasized that such problems were highly charged with emotion and their solution depended on the restoration of calm.

85. In reply to questions raised in connection with article 72 of the Constitution, the representative said that the provision, which acknowledged the right of any Union Republic freely to secede from the Soviet Union, had exacerbated nationalist unrest. The meaning of the term "federation" was being extensively debated in the country and there were as yet no legal norms to define the procedure by which the republics could exercise their right to secede from the Soviet Union. Such questions had to be dealt with very carefully since they touched also on problems of international politics, such as the modification of borders. Allowing each constituent part of the federation to threaten the very integrity of the State would also run counter to the implementation of international instruments on human rights.

86. A bill on economic independence, linked to the language and nationality issues, was currently under study. Commissions had been set up to study the events which had taken place in Georgia and to look at the question of returning deported populations to their national territory. There was also a draft bill on the free national development of Soviet citizens who were living outside their national

republics or autonomous entities or who did not have any republics or autonomous entities withing the USSR. Since the problems of self-determination and freedom of nationalities often involved religious conflicts, their solution also involved applying democratic forms of freedom of conscience and of religious association.

87. Replying to other questions, the representative noted that the Union Republics were sovereign states whose sovereignty could be limited only under very precise conditions involving the need to meet national objectives and to satisfy the demands of the nation's population as a whole. The new Constitution would define the respective powers of the Union Republics and the Soviet Union and a comprehensive list of matters which came within the jurisdiction of the Soviet Union would be drawn up. Any matter not on the list would fall within the scope of the Union Republics and the other entities. Commissions had also been established within various Republics to raise political awareness, to strive to replace confrontation by dialogue and the exchange of opinions and to identify areas where a compromise might be reached. Unfortunately, the work of those commissions was not yet entirely satisfactory and legislation adopted by authorities in some Republics had not always been thought through properly and did not reflect a spirit of compromise.

State of emergency

88. With regard to that issue, members of the Committee wished to know whether the state of emergency imposed in the Nagorno-Karabakh Autonomous Region and the Agdam district of the Azerbaijan Soviet Socialist Republic, as notified under article 4, paragraph 3 of the Covenant on 13 October 1988, had been formally terminated. They also wished to receive information on the impact of the state of emergency on the exercise of the rights guaranteed under the Covenant.

89. In his reply, the representative of the State party pointed out that the aim of the state of emergency, which had been in effect since 21 September 1988 in the Nagorno-Karabakh Autonomous Region, was to protect the population and that its implementation did not involve any discrimination which might constitute a violation of the Covenant. It was expected that the curfew could be lifted in the near future. Since the state of emergency was a new phenomenon and lacked legal definition in certain respects, the Supreme Soviet was currently studying the relevant legal provisions to bring them into line with those of international human rights instruments.

Non-discrimination and equality of the sexes

90. With regard to that issue, members of the Committee questioned whether article 34 of the Constitution was fully compatible with article 2, paragraph 1, of the Covenant. They also requested additional information on the work, functions and effectiveness of the Women's Councils and the Soviet Women's Committee and concerning measures being taken to guarantee the rights and freedoms of persons, other than Soviet citizens, living in the Soviet Union.

91. In his reply, the representative of the State party acknowledged that article 34 of the Constitution did not refer to non-discrimination on the grounds of political opinion, but said that it was now conceivable that that article would be amended since in practice such discrimination did not exist. The Women's Councils and the Soviet Women's Committee had been established to provide assistance to families and were also involved in drafting legislation on the

protection of women and health. The USSR did not have a specific law concerning the rights and obligations of foreigners but there were clauses in the Constitution and labour legislation which specifically concerned foreigners.

Right to life

92. With reference to that issue, members of the Committee wished to know how often and for what crimes the death penalty had been imposed and carried out since the consideration of the Soviet Union's second periodic report; what was the current status of the study on the possibility of substantially reducing the application of the death penalty; whether any consideration had been given to the abolition of the death penalty; what the rules and regulations were governing the use of firearms by the police and security forces, whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; and what measures had been taken to protect the right to life against the risk of nuclear disaster and environmental pollution. In addition, with respect to the tragic events in Tbilisi it was asked what steps had been taken to avoid the repetition of such events and how the report of the commission of inquiry to the Georgian Supreme Soviet had been followed up.

93. In his reply, the representative of the State party pointed out that the death penalty was only imposed for serious crimes and that, for some years, the number of executions had decreased. Similarly, although the majority of the population was in favour of keeping the death penalty, the number of crimes for which the death penalty could be imposed was constantly decreasing. It was conceivable that in the future it would be retained only for treason, espionage, terrorism, sabotage, murder with aggravating circumstances, and the rape of minors. The death penalty could not be imposed on pregnant women and a recent bill prohibited the imposition of such a penalty on juveniles and people over the age of 60 at the time of sentencing. The use of firearms by the security forces, particularly by the militia, was regulated primarily by a decree of the Presidium of the Supreme Soviet issued on 7 July 1973. In the rare cases in which weapons were used illegally by law enforcement officials the persons responsible were subject to severe penalties. Referring to the tragic events in Tbilisi, the representative underlined that the Government was endeavouring to ascertain the circumstances in which they had occurred in order to draw the necessary conclusions and take steps to avoid their repetition. A commission of inquiry had been set up by the Congress of People's Deputies and both the Procurator-General's Office and the Military Procurator's Office were involved in supervising the investigations.

94. Replying to other questions, the representative stated that the Chernobyl tragedy had had extremely serious consequences for the health of the population. Since that incident, a State Commission for the protection of nature had been established and a Committee had been formed within the Presidium of the Supreme Soviet to deal with environmental protection. Inspection of all power stations had been carried out and the Yerevan power station had been closed because it was located in a seismic zone. Although legislation did not contain any specific provisions aimed at protecting the population and the environment against errors which put them in danger, several clauses in the criminal codes of various Republics specified the liability of people in authority and indeed, such clauses had been applied to those in charge of the Chernobyl power station. A bill that would define liabilities and strengthen the security and protection systems at those installations was currently under consideration.

Liberty and security of the person and treatment of prisoners and other detainees

95. With reference to that issue, members of the Committee wished to know the main differences in the régimes applied in "colony-settlements", "corrective labour colonies" and "training labour colonies" and inquired whether the United Nations Standard Minimum Rules for the Treatment of Prisoners as well as the Code of Conduct for Law Enforcement Officials were known and accessible to detainees and complied with in these colonies. They wished to receive further information concerning the application in practice of two relevant Decrees of the Central Committee of the CPSU dated 20 November 1986 and 4 June 1987, especially with regard to the remedies available in cases of wrongful detention, and arrangements for the supervision of prisons and other places of detention. Members also wished to know about the contents of Order No. 9 of the Procurator-General of the Soviet Union dated 19 February 1988 and about its implementation; what the maximum periods were of detention in custody and of pre-trial detention; what were the conditions and duration of solitary confinement; what bodies were empowered to commit first offenders to corrective labour colonies; who determined whether or not a person was a dangerous recidivist; whether detention in a corrective labour colony could be imposed by administrative order; who was responsible for the inspection and supervision of the various prison colonies; and what the procedure was for receiving and investigating complaints by detainees.

96. Concerning psychiatric practices and regulations, members wished to know what progress had been achieved in preventing abuses and errors in the psychiatric field since the adoption of the Regulations on the conditions and procedure for providing psychiatric care; whether the possibility of appeal was available to a person interned in a psychiatric hospital; whether Soviet authorities intended to introduce an ongoing review of patients' files; whether criminal liability for the wrongful placement of a person in a psychiatric hospital applied only to persons responsible for wrongful placement or also to those responsible for keeping such a person in hospital after placement; and whether the staff of psychiatric hospitals who had previously been under the authority of the Ministry of the Interior would be retained to work under the Ministry of Health. Clarification was also requested about allegations that persons who had run against official candidates in the 1989 elections had been committed to a psychiatric hospital.

97. In his reply, the representative of the State party said that offenders were subjected to different prison régimes depending on their personality and the gravity of the offence they had committed. Women could only be placed in corrective labour colonies by sentence of a court. The courts were solely responsible for determining whether or not a person was a dangerous recidivist. Although it had not yet been possible to follow exactly the Standard Minimum Rules for the Treatment of Prisoners, the Soviet Union was constantly endeavouring to bring its prison service more closely into line with international standards. A guide for police and prison officials on international human rights standards had recently been published by the Ministry of the Interior and internal regulations for prisoners had been changed. Responsibility for the supervision of places of preventive or other forms of detention was vested in the Procurator-General and his subordinates. Solitary confinement was only imposed in corrective labour colonies with special conditions and the maximum term of such confinement was one year. A new system introduced for prisoners who wished to complain about their treatment provided for placing complaints in a special box that was delivered directly to the local procurator's office. Since 1985 the number of prison sentences had decreased by 45 per cent.

98. Responding to other questions, the representative said that the Procurator's Office had to be informed of an arrest within 24 hours and then had to decide within a further 48 hours whether to charge the suspect or to release him. That office was also obliged to ensure that arrests were carried out in strict conformity with the law and only when absolutely necessary. At present, a suspect had no right to legal defence until the preliminary investigation was completed but the Supreme Soviet was expected shortly to approve a proposal to allow a lawyer to represent a suspect at an earlier stage of the proceedings. The maximum period of pre-trial detention was two months but that figure could be increased to a maximum of nine months at the discretion of the higher level Procurator's Office. A person could be held in administrative detention only for a period of three hours.

99. Replying to questions raised in connection with psychiatric treatment, the representative emphasized that such treatment could now be carried out only with the permission of the patient or, in the case of mentally incapacitated persons and persons under the age of 16, of the patient's family or legal representative. Patients could be detained against their will if they were a danger to themselves or others, in which case the decision was taken by the chief psychiatrist of the establishment concerned. The regulations of 5 January 1988 gave psychiatric patients the opportunity to appeal against their detention to higher level medical authorities as well as to the courts directly. Since March 1988 it had become a criminal offence to commit a person known to be healthy to a psychiatric hospital. Not only the ordering of such detention but also the detention itself constituted a criminal offence. A careful survey had shown that there were no such cases at present.

100. Great efforts were being made to ensure that the new decree was properly implemented, even by enlisting the aid of psychiatric institutions and experts from abroad. Any complaint from a particular patient or his family or a lawyer could be sent to a higher medical institution or placed before a court. A special service of chief psychiatrists with monitoring and control functions had also been established to determine, inter alia, whether placement in psychiatric institutions was indeed necessary. The Soviets of People's Deputies and the executive committees were also responsible for monitoring the treatment of mentally-ill patients, protecting their rights and legitimate interests and ensuring that they were restored to a normal life wherever possible. Staff members of psychiatric hospitals who had previously been under the authority of the Ministry of the Interior would need to acquire the necessary retraining, on an individual basis, to enable them to upgrade their skills. Allegations concerning the wrongful detention in mental hospitals of persons who had participated in the recent election had been investigated and it had been established that the persons concerned had been hospitalized for quite valid reasons that had nothing to do with their political views or with the recent election campaign.

Right to a fair trial

101. With regard to that issue, members of the Committee wished to receive further information concerning the actual implementation of the comprehensive judicial reforms; measures taken to ensure that trials were genuinely public, allowing access also to representatives of the local and foreign press; and the free legal aid system in the Soviet Union. In addition, it was asked whether it was still necessary to be a member of the Communist Party to be appointed a judge; who paid the salaries of judges; how the judicial reform would affect lawyers and whether it

was necessary for an advocate to be a member of a professional association in order to be authorized to practise law; and whether the concept of "socialist legality" would be retained and was compatible with efforts to promote the rule of law.

102. In his reply, the representative of the State party said that while the judicial reform process was still in its early stages a number of major steps had already been taken, notably with regard to the status of the judiciary. For example, only the Procurator-General of the USSR or procurators of the Republics would be entitled in the future to bring charges against a judge, and not only where sufficient evidence was available. Similarly, in order to ensure that judges were fully independent and free from police influence, major changes were to be introduced in the system for electing judges of the people's courts and measures were also envisaged to improve the qualifications of those dispensing justice. A further measure to ensure the right to a fair trial had been to increase both the number of judges and the number of people's assessors in complicated criminal cases.

103. Judges received a fixed salary paid from the State budget through the Ministry of Justice. They did not necessarily have to be members of the Communist Party and were required to administer justice exclusively on the basis of the law, without regard to any political considerations. Any attempt by a judge to take decisions on the basis of a Party directive would amount to an interference in the legal process and would violate the relevant legislation and the Constitution. Advocates in the country were organized into colleges, which were independent professional associations operating on the basis of self management. The colleges were responsible for the implementation of the Code of Conduct governing the rights and duties of advocates. The remuneration of advocates was subject to regulations issued by the Ministry of Justice but there was a considerable difference between the minimum and maximum fee that could be charged for each particular procedure. Free legal aid was provided in a number of cases, including labour disputes, claims for compensation for damage to health, complaints regarding pensions, complaints regarding incorrect electoral registration, and criminal cases where it could be shown that the person concerned could not afford to pay. The law required that trials should be public and open to all interested persons, including representatives of both the local and foreign press. _In camera_ trials could be justified only on serious grounds. There was no contradiction between the concept of socialist legality and the current effort to establish the supremacy of the role of law. Such a concept was applicable to all types of society, whether capitalist or socialist, if by the rule of law was understood to imply a régime that guaranteed the rights and freedoms of citizens and upheld universal human values.

Freedom of movement and expulsion of aliens

104. With reference to that issue, members of the Committee wished to receive detailed information about the provisions of the Decree of the Council of Ministers dated 28 August 1986; about the application of the right of everyone to leave any country, including his own; and about the criteria for prohibiting departure. Specifically, they wished to know who had the authority to prohibit departure; what recourse was available against such prohibition; whether it was planned to revise the Regulations of 22 September 1970, as modified by the Decree of 28 August 1986; how long it took to process an application by a Soviet citizen to leave the country; whether an applicant's political opinion was taken into account in granting permission to enter or leave the country; whether it was planned to eliminate the invitation requirement; whether family reunion remained the condition for obtaining authorization to leave the country; whether, under the new

legislation, everyone could in principle leave the country, with a few clearly defined exceptions or whether, on the contrary, no one could leave the country without receiving explicit authorization; whether that right would be guaranteed without any discrimination; whether the new rules would be applied retroactively to persons who had submitted a request to leave before the entry into force of the new law; and whether political exiles and persons who had emigrated legally would be authorized to return to the country. Detailed information was also sought concerning the scope of the expression "state security" and how it was interpreted in practice. Members also asked whether there were any limitations placed on the freedom of movement or residence of Soviet citizens within the USSR.

105. In his reply, the representative of the State party said that under the Decree of August 1986, which had simplified applications procedures, all persons, including both nationals and foreigners, could enter or leave the USSR on private business without any discrimination. Soviet citizens could leave the country temporarily at the invitation of relatives or friends and could, in turn, invite such persons in writing to visit them in the USSR. The restriction on departure when most of the applicant's close relatives remained in the USSR had been lifted. Authorization to leave the country was, however, subject to the fulfilment of family and other obligations. The grounds for the rejection of an application were communicated to the applicants in writing. Citizens were now allowed to keep their passports after returning from abroad; had the right to travel anywhere in the USSR except for minor territorial restrictions, and were free to choose their place of residence. The Government had undertaken to review a significant number of applications for exit visas that had previously been rejected and most of them had subsequently been granted while the remainder were pending because the applicants were still subject to the restriction concerning State secrets.

106. Responding to other questions, the representative said that political opinion could not be invoked as a reason for preventing a person from leaving the country. When a person has had access to State secrets, the new law on entry into and departure from the USSR under preparation would provide a five-year limit upon restrictions that could be imposed on his right to leave. The new law would be consistent with article 12 of the Covenant and would have retroactive force, like all legal provisions that increased citizens' rights and improved their living conditions.

Right to privacy

107. With regard to that issue, members of the Committee wished to receive further information on measures taken, pursuant to the Act of the Supreme Soviet of the USSR dated 30 June 1987, to strengthen freedom from arbitrary interference with privacy, home or correspondence, and concerning the law and practice relating to the collection and safeguarding of personal data. In the latter connection, it was also asked whether incorrect information or information collected or processed contrary to the law could be corrected or removed.

108. In his reply, the representative of the State party said that although the Soviet Union's Constitution and laws already contained provisions guaranteeing the right to privacy and the inviolability of the home and correspondence his Government had decided to strengthen the protection of the right to privacy by making basic changes in the Penal Code and the Code of Penal Procedure in order to take into account the possibilities offered by new techniques in connection with inquiries and investigations. The media would also be made subject to penalties

for violating the right to privacy through libel. Breaches of medical confidentiality and the unauthorized disclosure of certain personal information were punishable under existing laws and regulations. It was also planned to adopt regulations governing the uses of personal information gathered and classified by computer techniques.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial and religious hatred

109. With regard to these issues, members of the Committee wished to receive information concerning restrictions, if any, on the right of parents to ensure the religious education of their children; the freedom of assembly and association of religious communities; and on the use of places of worship and the publication of religious material. They also wished to know what was the status and position of conscientious objectors; how the right to seek, receive and impart information and ideas of all kinds was ensured; what was the current status of the draft bill concerning freedom of conscience; whether, in view of the introduction of that draft bill and of planned reforms of criminal legislation, there were any plans entirely to eliminate the offences of "anti-Soviet propaganda" and "anti-Soviet calumny"; whether the introductory part of article 50 of the Constitution was considered as offering a limited or wide scope of the right to freedom of expression, and whether the Supreme Soviet contemplated the enactment of legislation regulating the press and, if so, what its characteristics would be.

110. In addition, it was asked whether the draft bill concerning freedom of conscience would maintain the requirement for the registration of religious activities and the severe penalties for persons engaging in religious activities without having obtained prior authorization; whether there were still any unregistered or unauthorized religious communities and what such communities could do to legalize their status; and whether the Ukrainian Catholic Church would be legalized.

111. Replying to questions raised by members of the Committee in connection with freedom of religion, the representative of the State party acknowledged that the legislation in force was not yet satisfactory. In practice, however, there were no real limitations. A large number of buildings, for example, had once again become places of worship and were widely used. The draft bill on religious freedom provided for freedom to decide what attitude to adopt towards religion and what religious education to give to children as well as for full freedom of conscience within the limits imposed by public order, public morals and public health. Registration of religious communities was still compulsory but an unregistered community could also hold religious services in a normal manner without being obliged, in practice, to pay even the symbolic fine of 50 roubles. The only remaining problem in this area related to the recognition of the Ukrainian Catholic Church - The Uniate Church - which raised delicate problems of the relations of religious denominations among themselves. The authorities, who had reason to fear an exacerbation of those relations and the social unrest that might attend it, were monitoring the situation closely and were making every effort to bring the various parties together. Conscientious objectors on religious grounds, who were the only group recognized under the law, were free to perform their service in non-military units, such as the health services or in civil engineering.

112. Responding to other questions, the representative said that a draft bill on the right to information was planned and that the draft bill on freedom of the press contained some very progressive concepts, which would require Government officials to furnish information to the media. Censorship would be explicitly prohibited and restrictions limited to the prevention of abuses. "Anti-Soviet propaganda" and "anti-Soviet calumny" were now defined, pursuant to a decree of 8 April 1989, as calling for the overthrow of the State or the Soviet order by force.

Freedom of assembly and association; right to participate in the conduct of public affairs

113. With reference to that issue, members of the Committee wished to know what were the main changes introduced by the new trade union statutes adopted in 1987; whether the draft bill on the rights of trade unions had been enacted; what was the total trade union membership in the Soviet Union and what percentage of the labour force belonged to trade unions; whether agricultural workers were unionized; whether members of the trade unions were required to be members of the Communist Party; whether State authorization was necessary to establish a trade union; whether the authorities planned to abolish the compulsory authorization required to organize a demonstration; whether detainees lost their voting rights; and whether there were any plans to extend the system of multi-mandate electoral districts. In addition, further information was sought regarding the regulation of demonstrations and the influence of the Communist Party over the trade unions.

114. In his reply, the representative of the State party explained that the amendments to the trade union statutes adopted in 1987 were essentially designed to harmonize them with the new laws on state enterprises and work collectives and were superficial. However, an important draft bill was at present being drawn up by the Confederation of Trade Unions in order to extend trade union rights. The total number of union members in the Soviet Union was well over 100 million. Trade unions played an active and independent role in the country and their establishment was not regulated by the State. The Communist Party certainly exerted influence on trade unions but trade union leaders were not necessarily members of the Party. Authorizations to organize demonstrations or processions were necessary only if they were to be held in a public place. In the future, the authorities would probably require only that information be provided as to the time and place of a planned demonstration. A draft bill to introduce the system of multi-mandate electoral districts for elections to local and Union Republics' bodies was under consideration.

Rights of persons belonging to minorities

115. With regard to that issue, members of the Committee wished to know whether there were any special factors and difficulties in the effective enjoyment by persons belonging to minorities of their rights under article 27 of the Covenant.

116. In his reply, the representative acknowledged that the problems of minorities connected with land ownership and exploitation of the resources of the land were very real and threatenend their way of life and even their very existence. The issue was, however, being actively examined by the Congress and a draft bill setting out the rights of minorities and the obligation for the State to protect their culture, language and way of life had already been introduced.

General observations

117. Members of the Committee expressed their thanks to the representatives of the State party for their co-operation in presenting the third periodic report of the USSR and for engaging in a discussion that had been thought-provoking. The report was satisfactory in every respect and quite comprehensive and the open and candid manner of its presentation by the delegation was particularly appreciated. The delegation was of exceptionally high competence and level and the presence of the Minister of Justice and of a member of the Congress of People's Deputies had been especially valuable. It was clear that the authorities had made noteworthy efforts to transform the USSR into a State governed by the rule of law and that much progress had been achieved in many areas that had caused concern during the consideration of the earlier reports, such as the protection of the right to life, the independence of the judiciary, freedom of conscience, the treatment of persons interned in psychiatric institutions, freedom of movement and freedom of political activity. At the same time, it was noted that the Soviet Union still faced an enormous task in the field of human rights and problems and difficulties still had to be addressed, notably in relation to the rights of nationalities, the treatment of minorities, the independence of the judiciary, freedom of religion, expression, movement and association and respect for privacy. Members also noted that the current process of rapid change carried with it the risk of going from one extreme to the other and cautioned against attempts to introduce new forms of discrimination. They wished the Soviet Union every success in its pursuit of the policy of perestroika and expressed the hope that by the time its next periodic report was due the Soviet Union would have found it possible to ratify the Optional Protocol to the Covenant.

118. The representative of the State party said that the discussion had been extremely enriching for the Soviet delegation, which had acquired considerable knowledge that would be useful in the future. He assured the Committee that although an enormous task remained the Soviet Union would do everything in its power to carry it out. In his view, the results of the dialogue with the Committee were of fundamental importance for the peoples of the Soviet Union.

119. In concluding the consideration of the third periodic report of the USSR, the Chairman noted that the Committee had been considerably enlightened about the way in which the Soviet Union was fulfilling its obligations under the Covenant and could now better appreciate the extent to which the rights set out in the Covenant were protected and the difficulties that had been encountered. No other periodic report had revealed comparable progress. Care was now necessary to ensure that the energy generated by the new forces that had been created was directed towards the fulfilment of genuine human rights objectives.

Portugal

120. The Committee considered the second periodic report of Portugal (CCPR/C/42/Add.1) at its 934th to 937th meetings, held on 31 October and 1 November 1990 (CCPR/C/SR.934-SR.937).

121. The report was introduced by the representative of the State party, who emphasized that Portugal was making continuous efforts to bring its own domestic law into line with its new international commitments, notably those resulting from its accession to the Covenant. A number of the provisions of the Constitution

covering fundamental rights had therefore been revised, particularly those relating to the status of foreigners, access to the courts, reform of the judiciary, criminal law and criminal procedure. In addition, the Civil and Criminal Codes had also been revised.

122. The process of preparing the report had been useful as a means of assessing progress achieved in implementing the Covenant. The Ministry of Justice and the Ministry of Foreign Affairs had co-operated in collecting information on matters related to human rights and in following up action taken.

Constitutional and legal framework within which the Covenant is implemented

123. With regard to that issue, members of the Committee wished to know whether the Public Prosecutor's Department had lodged any appeals before the Constitutional Court pursuant to article 280, paragraph 2, of the Constitution and, if so, with what results; whether there had been any court decisions as to the standing of rules and principles of international law relative to ordinary domestic law and to constitutional provisions; what was meant by the term "right of petition and popular action" in article 52 of the Constitution; and whether the new Code of Penal Procedure had entered into force. They also wished to receive information concerning factors and difficulties, if any, affecting the implementation of the Covenant; activities relating to a greater public awareness of the provisions of the Covenant and the Optional Protocol; and the powers independence, functions and activities of the "Provedor de Justiça" (Ombudsman) in so far as the implementation of the Covenant was concerned.

124. In view of the reversion of Macao to China in 1999, members expressed special interest with regard to the legal framework for the guarantee of human rights in the territory. They wished to know, in particular, whether the Covenant was applicable in Macao and the archipelagos of the Azores and Madeira; whether the arrangements between Portugal and China included a provision for the maintenance of the civil and political rights of the population of Macao; and whether the Covenant would continue to be applicable within the territory after 1999.

125. Referring to the legal status of the Covenant within internal law, members wished to know what mechanisms were employed in Portugal to harmonize the Covenant and domestic law; whether the Covenant could directly be invoked by individuals before the courts; whether the right of petition and popular action, provided for in article 52 of the Constitution, related to any of the rights covered by the Covenant; and whether the Constitutional Court was empowered to decide on matters concerning Portugal's international obligations. Members also wished to receive detailed information regarding a recently established commission on human rights; the meaning of the concept of "active unconstitutionality", as provided for in article 278 of the Constitution; the distinction between the Supreme Court of Justice and the Constitutional Court; the scope and contents of the right to legal information enshrined in article 20 of the Covenant; and requested clarification of an individual's right, provided for under article 21 of the Constitution, "to resist any order which infringed his rights, freedoms or safeguards and to repel by force any form of aggression when recourse to public authority was impossible".

126. In his reply to the questions raised by members of the Committee concerning Macao, the representative of the State party pointed out that although the Covenant as such was not applicable there some Portuguese jurists held that since the rights provided for in the Covenant belonged to everyone under Portuguese administration,

it should be considered as being applicable. In practice, the residents of Macao enjoyed exactly the same degree of legal protection as other Portuguese citizens because the country's Constitution and legislation regarding basic rights were directly applicable. In a joint declaration by the Governments of China and Portugal, China had stated that among the principles to be applied to the territory after its reversion to China in 1999 would be respect for existing rights and freedoms, such as freedom of expression, freedom of association, the right to strike and inviolability of the domicile. Formally, however, the Covenant would not be applicable in the territory of Macao after 1999. On the other hand, the Covenant was applicable in the archipelago of the Azores and Madeira, because they were an integral part of the State of Portugal.

127. Referring to activities relating to the promotion of greater public awareness of human rights issues, the representative said that in 1988, the year of the fortieth anniversary of the Universal Declaration of Human Rights, various briefings, seminars and symposia relating to human rights had been organized; a centre for human rights had been set up within the Ministry of Justice for receiving, processing and distributing copies of the most important texts adopted by international organizations in that field; a collection of international human rights instruments had been published in Portuguese and widely distributed in schools; information on international human rights instruments had been disseminated to the courts; and a commission had been established to consider how best to introduce a multi-disciplinary approach to the teaching of human rights and how to increase awareness of such rights on the part of both teachers and students. Courses at the Portuguese College of Magistrates included a study of international human rights instruments, and every police officer carried a copy of a code of conduct, in which his duty was defined as acting in defence of democratic legality and of the fundamental rights of the citizen. The training of police officers included a study of regional and global systems for the protection of human rights. The text of international instruments covering such areas as medical ethics and the treatment of prisoners had been distributed to prison officers.

128. Responding to questions relating to the Ombudsman, the representative explained that the Ombudsman was an independent public officer, appointed by the Assembly of the Republic, who received complaints by individuals regarding acts or omissions on the part of Government officials and made recommendations as to how acts of injustice might be remedied. He could also draw attention to imperfections in legislation; disseminate public information on fundamental rights and freedoms; make inspections of any sector of the administration; and carry out investigations, notably of alleged acts of torture committed by police or prison officers. The Ombudsman submitted an annual report on his activities to the Assembly of the Republic which included statistics on the number and nature of complaints received. There was no national commission on human rights in Portugal but an informal body, composed of representatives of the Ministry of Justice and the Ministry of Foreign Affairs, followed all activities designed to disseminate, promote and implement human rights in the country and prepared reports for submission to the competent international authorities.

129. Regarding the relationship of international to domestic law, he noted that according to the Constitutional Court, the rules of international law set forth in instruments to which Portugal was a party took precedence over domestic law but not the Constitution. Theoretically, in case of a conflict between the provisions of the Covenant and those of the Constitution, the constitutional standards relating to the determination of unconstitutionality would prevail, but such a conflict was

most unlikely since the Constitution had to be interpreted in the light of the Universal Declaration of Human Rights as reflected in the text of the Covenant. Article 280 of the Constitution was designed to ensure that the Constitutional Court should act as an effective court of last resort in cases where the courts had refused to apply legal provisions contained in international conventions or in national laws or decrees. Once the same legal provision had been held to be unconstitutional or illegal in three specific cases, the Constitutional Court was entitled to declare that provision unconstitutional. Although the Constitutional Court could overrule the Supreme Court in a given case, the latter did not have to conform to such opinions in other cases except where a provision had been ruled illegal on general grounds.

130. Finally, the representative explained that the right of petition was a means of promoting the participation of citizens in political affairs. Petitions could be individual or collective and addressed to the sovereign bodies or to any public authority. The right of popular action involved the right of all citizens to have recourse to the courts whether or not they had a personal interest in a case. The new Code of Penal Procedure had entered into force on 1 January 1988. The right provided in article 21 of the Constitution was to be exercised only in extreme situations and resisting an order in a normal situation would be considered illegal.

Self-determination

131. With reference to that issue, members of the Committee wished to know the position of Portugal regarding the right to self-determination of the peoples of Namibia and Palestine and whether Portugal had taken any measures to prevent public and private support for the *apartheid* régime of South Africa. Additionally, further information was sought regarding the legal framework within which human rights were guaranteed in East Timor.

132. In his reply, the representative of the State party said that since 25 April 1974, Portugal had scrupulously respected the right of peoples to self-determination and had shown its commitment to this right by granting independence to the peoples of Angola, Mozambique, Cape Verde, Guinea-Bissau and Sao Tome and Principe. Portugal recognized the right to self-determination of the Palestinian people and the right of all States in the region, including Israel, to exist within secure and recognized boundaries; had long supported the right to self-determination of the people of Namibia and had welcomed the agreement between the parties concerned which had allowed the ongoing process of self-determination to take place; and had also constantly and unequivocally condemned the *apartheid* régime. The application of indiscriminate sanctions against South Africa was considered contrary to the interests of the majority of the population of South Africa and neighbouring countries whose economies were closely linked with it but Portugal supported and applied selective sanctions such as those decided upon by the European Community.

133. East Timor remained on the United Nations list of Non-Self-Governing Territories, Portugal being recognized as the administrating power because of its former responsibilities as the colonial power. Portugal had declared the Covenant to be applicable to East Timor but was unfortunately not in a position to ensure that it was applied and effectively respected since it had no access to the Territory, which was under occupation. Portugal was continuing to co-operate in the Secretary-General's efforts to find a just, comprehensive and internationally acceptable solution to the problem.

State of emergency

134. In connection with that issue, members of the Committee asked how the role accorded to military courts during a state of emergency could be reconciled with the retention of a person's free right of access to the courts and whether there could be derogations in times of emergency from the right to habeas corpus and the provisions of article 8 of the Covenant.

135. In his reply, the representative of the State party said that there had been no case of a declaration of a state of siege or state of emergency in Portugal since the adoption of the Constitution. The distinction between the two situations related to the differences in the degree of seriousness of events justifying their proclamation. The scope of suspension of rights was less broad under the state of emergency. Only in the event of a proclamation of a state of siege were military tribunals given competence comprising the investigation and trial of persons infringing the state of siege and of persons committing offences against the life, physical integrity and freedom of individuals, and against the right to information, security of communication, property and public order. The right of access to the courts could however, in no way be restricted as a result of the expanded competence of the military courts and the ordinary law courts continued fully to exercise their competence and functions. In particular, they were required during a state of emergency to ensure respect for the constitutional and legal standards established under article 23, paragraph 112 of Act No. 46/84. Accordingly, the right to habeas corpus could not be suspended under any circumstances.

Non-discrimination and equality of the sexes

136. With regard to that issue, members of the Committee wished to receive information concerning women's participation in the political, economic, social and cultural life of the country and the proportion of the sexes in schools, universities, the civil service, the Government and Parliament; measures being introduced by the Commission on the Status of Women to combat discrimination; and concerning follow-up measures adopted, if any, after the issuance of the conclusions of the Parliamentary Commission on the Status of Women. Members also requested clarification of the reference in article 15(2) of the Constitution to rights "restricted exclusively to Portuguese citizens under the Constitution and by law" and of the decision of the Constitutional Court declaring unconstitutional Decree No. 2/76 of the General Assembly in Madeira, which stipulated that preference should be given in the assignment of teachers to those originating from or residing in the region.

137. In his reply, the representative of the State party noted that a woman had been appointed Prime Minister for the first time in 1979, another had become Civil Governor in 1980 and yet another had recently been appointed as a judge of the Constitutional Court; that 19 of 250 deputies to the Assembly of the Republic, elected in 1987, 3 out of a total of 24 representatives elected to the European Parliament, 4 out of the 56 members of the present Government and 168 out of 1,199 judges were women. Women accounted for more than 50 per cent of attendance in schools, including at the secondary and higher levels.

138. The Governmental Commission on the Status of Women carried out a number of important activities for the promotion of women, including the establishment of a specialized documentation centre; the publication of a number of studies, booklets

and information documents; the organization of seminars and exhibitions and the preparation of films and audio-visual material. It had also co-operated in the formulation of important legal texts on such matters as maternity protection and the equality of women in labour and employment. The Commission had also been active in promoting revision of primary, preparatory and secondary curricula designed to promote equality of the sexes, in improving teacher training and in helping women to gain economic independence through participation in co-operatives.

139. The Commission on Equality in Employment on which the Governmental Commission on the Status of Women, the Government, trade union organizations and employers were represented, considered complaints of inequality. Its opinions were published and broadly disseminated. It also promoted the provision of financial support to enterprises for the introduction of changes that would facilitate the employment of women and the establishment of suitable working conditions for them and carried out studies and research on women's employment. The Parliamentary Commission on the Status of Women was established in 1982, within the Assembly of the Republic, and was required to take decisions on texts submitted to it with respect to the status of women.

140. Certain Constitutional provisions, such as those relating to participation in public life, the right of petition and guarantees of political participation, related only to citizens. However, equality between citizens and aliens was a long-standing tradition in Portugal and that tradition had just been strengthened by the addition to article 15 of the Constitution of a provision granting aliens resident in Portuguese territory the right to vote in local elections. Decree No. 2/76 of the General Assembly in Madeira had been held unconstitutional by virtue of articles 13 and 230 of the Constitution which prohibited discrimination on grounds of origin, and of regional origin, respectively.

Right to life

141. With reference to that issue, members of the Committee asked whether the adoption of Decree Law No. 430/83, concerning trafficking and use of narcotic and psychotropic substances, had led to any measurable progress to date; whether any consideration was being given to expanding the scope of Decree Law No. 324/85 so as to provide compensation to all victims of terrorist acts and not merely to public servants and their families; and whether there had been any violations of Decree Laws Nos. 458/82, 364/83 and 465/83, relating to the use of firearms by the police and, if so, whether investigations had been carried out, and measures taken to prevent their recurrence. Clarification was also sought as to how authorization of abortion on urgency grounds could be reconciled with article 24 of the Constitution.

142. In his reply, the representative of the State party explained that Decree Law No. 430/83 had made it possible to improve intersectoral co-operation in the control of trafficking in and abuse of drugs or psychotropic substances and had led to substantial seizures of drugs coming from abroad. An integrated drug control programme had been approved by the Council of Ministers at the national level which called for action in the areas of prevention, treatment and rehabilitation as well as control of trafficking. At the international level, bilateral drug control agreements had been concluded with a number of countries. Although the extension of Decree Law No. 324/85 to other categories was not envisaged for the moment, a commission of jurists appointed by the Minister of Justice had studied the question of compensation of victims and concluded that damages be provided by special legislation when they could not be paid by the offender. The courts could also

compensate victims by awarding them property seized by the State or all or a part of the fine paid by the offender. The Constitutional Court had decided not to declare provisions of article 140, paragraph 1, of the Penal Code unconstitutional because it protected the legitimate rights of pregnant women. Accordingly, abortion under the circumstances described therein was not to be considered a criminal offence.

143. Instructions had been issued at all levels concerning the use of firearms by law enforcement agents, cases of improper use in recent years had been investigated with a view to possible criminal proceedings and the use of firearms by the police was systematically monitored by senior police officials. In the three cases of violations of the regulations concerning the use of firearms involving the National Republican Guard, investigations had been carried out by the judiciary as well as by the military authorities and the cases had been widely publicized in the media. In one additional case involving personnel of the Criminal Investigation Department, it had been found that firearms had been used in self-defence.

Liberty and security of the person and treatment of prisoners and other detainees

144. With regard to that issue, members of the Committee wished to know whether there were any safeguards against abusive resort to special security measures and confinement in special security cells: whether there were any independent and impartial procedures under which complaints about the ill-treatment of individuals by police or prison officials could be made and investigated; what were the maximum time-limits for remand in custody; what remedies were available to a person claiming to be illegally detained; and whether there was a right to compensation for persons illegally arrested or detained. They also requested detailed information concerning deprivation of liberty as a result of the "judicial application of a security measure"; the circumstances and conditions of "partial deprivation of freedom"; and detention in institutions other than prisons and for reasons unconnected with the commission of a crime. It was also asked whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and the relevant regulations and directives known and accessible to prisoners.

145. Additionally, information was requested concerning special security cells and the incommunicado régime; conditions under which the use of handcuffs was authorized; whether a prisoner could be kept in a state of sensory deprivation; and whether confessions obtained under duress could be invoked as evidence in a proceeding.

146. Replying to questions raised in connection with special security measures, the representative of the State party said that limitations on the rights of prisoners were only applied in exceptional situations involving a threat to the security of the prison or danger to other prisoners and calling for particularly serious measures. Such measures had to be in proportion to what was required by the situation and could only be applied for as long as that situation continued. Even in particularly serious cases, which required the prisoner to be separated from the prison population as a whole, contacts with the outside world were not completely severed. In practice, prisoners in that category were placed in special quarters where visiting rights and privileges accorded under the general detention régime were restricted but the cells in those quarters were identical to other cells. The use of handcuffs was permitted only where other measures had been shown to be ineffective and then only under medical supervision. A detainee even if charged with terrorism or a serious crime was always able to communicate with his counsel.

Complaints of ill-treatment and any cases of death occurring in prison gave rise to an immediate investigation by the director of the establishment concerned or by higher authorities, depending upon the gravity of the circumstances. Protection against abuse was based on general guarantees defined in the penitentiary law. The judge responsible for the enforcement of sentences supervised their execution and played an advisory role during visits to prison establishments. The penitentiary law reform introduced by Decree Law No. 265/79 took account of the United Nations Standard Minimum Rules for the Treatment of Prisoners and was made known to the detainees.

147. Turning to questions raised in connection with pre-trial detention, the representative stated that in normal cases such detention varied from six months to two years depending on the stage the trial had reached. Some exceptions to that rule were authorized under the law based on such factors as the nature and gravity of the crime. Persons who considered themselves to be illegally detained could apply for a writ of habeas corpus. Article 27(5) of the Constitution provided that any deprivation of freedom in breach of the provision of the Constitution and the law obliged the State to compensate the victim in accordance with the law. The 1987 Code of Penal Procedure contained a new provision stating that any person who had been unlawfully detained on a pre-trial basis or otherwise was entitled to compensation. The right to compensation also existed in cases where pre-trial detention, even if lawful, was shown to be unjustified.

148. Security measures provided for in article 27 of the Constitution could only be applied as a result of a court judgement and could be extended by judicial decision only for as long as the dangerous condition lasted. Such decisions were subject to review after three years at most. The Mental Health Act provided that the mentally ill should be given appropriate treatment to restore them to normalcy. Partial deprivation of liberty had to be of less than three months' duration and was served during days off which allowed the convicted persons to continue with their work or studies. There was also a probation system applicable to persons sentenced to deprivation of liberty for a period not exceeding three years. The "relatively" indeterminate sentence was applied to offenders showing a strong propensity for crime and to drug addicts or alcoholic offenders and could not exceed a maximum of 25 years.

Right to a fair trial

149. With regard to that issue, members of the Committee wished to know the extent to which the amendment of article 32, paragraph 4, of the Penal Code had weakened the position of the accused; whether there was any free legal aid and advisory scheme; whether under article 29 of the Constitution the principle of the most favourable law, enshrined in article 15 of the Covenant, applied only to an accused person or to a convicted person as well; whether persons convicted of administrative offences could be sent to prison; and whether placing the judicial police under the guidance of the public prosecutor had led to significant improvements over the former system. Information was also sought regarding the nature and competence of the courts responsible for the enforcement of sentences.

150. In his reply, the representative of the State party explained that during the pre-trial proceedings the public prosecutor, the accused and his counsel, and the plaintiff and his counsel could participate in the hearing. Legal aid could be applied for at any stage in the proceedings by the accused, his lawyer, or the public prosecutor's department. If he considered he was not being defended with

due diligence, the accused could request the court to provide him with another counsel. The penalty for administrative offences could be a fine, possibly accompanied by other penalties, but not imprisonment. The principle of the most favourable law was applied during proceedings, and not after a final decision. The courts for the enforcement of sentences were ordinary courts with specialized competence in matters concerning the lives and treatment of prisoners.

Freedom of movement and expulsion of aliens

151. In connection with that issue, members of the Committee wished to receive further information regarding the meaning of the term "threat against the dignity of the State of Portugal or of its nationals" and concerning the provisions of Portuguese Law relating to the issuance of passports to foreigners living in Portugal whose country had no diplomatic or consular representation there. They also wished to know whether persons seeking asylum who had not submitted their application within the period of 60 days were automatically subjected to expulsion; whether an appeal against an expulsion order had suspensive effect; and how many requests for asylum had been refused in recent years.

152. In his reply, the representative of the State party said that no alien had ever been expelled from Portugal for failure to respect the Portuguese State and its citizens and no deportations could take place on any grounds that were contrary to conventions to which Portugal was a party. Expulsion decisions were rendered in strict observance of all legal guarantees, had to be substantiated, and the judge had to indicate, *inter alia*, the time allowed for their execution. Portugal refused to grant extradition in cases where the death penalty was likely to be applied nor would it expel a person to his own country if he was in danger of persecution there for political reasons. An alien seeking asylum who failed to submit an application within 60 days of entering Portuguese territory was regarded as having entered the country illegally. Applications for asylum had to describe the circumstances justifying asylum and to be accompanied by a list of up to 10 references. Between 1974 and 1989, 767 such applications had been granted. Many of these had been submitted by persons previously living in the former Portuguese colonial territories who, following decolonization, had left those territories because of persecution or for political reasons. Refusal of asylum could be appealed against, with suspensive effect, to the Supreme Administrative Court. In many cases in which permanent residence had not yet been authorized, temporary permission was given pending a final decision. Passports were issued to stateless persons or to nationals of countries without any diplomatic or consular representation in Portugal in order to give them legal citizenship of a national territory.

Right to privacy

153. With regard to that issue, members of the Committee wished to receive additional information on article 17 of the Covenant in the light of the Committee's general comment No. 16(32) and concerning the role of the Inspection Board. They also wished to know who was entitled to set up a personal data bank and on what basis and how information from data banks could be disclosed.

154. Responding to questions raised by members, the representative of the State party noted that privacy was protected under Portuguese law by various articles of the Penal Code, including articles 176, 178-181, 428 and 434. In one case the Constitutional Court had declared unconstitutional a rule that had allowed the

authority to search the tents and caravans of gypsies. Following a Constitutional Court finding of unconstitutionality by omission in respect of article 35, paragraph 4, of the Constitution, a law regulating the rights of citizens in relation to data banks had been drafted and was shortly to be considered by the Assembly of the Republic. That law would, inter alia, regulate the compilation and processing of personal data and the establishment of individual data files and would create the National Commission on Data Processing and Freedoms.

155. The Inspection Board exercised an oversight function in respect of the Strategic, Military, and Security Intelligence Services, receiving annual reports from them. When necessary, it could request additional information about their activities. In its first report to the Assembly of the Republic covering the years 1986 and 1987 the Board had stated that it considered itself responsible for checking whether the rights of citizens were being respected by these services and had concluded that this had, indeed, been the case.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

156. With reference to those issues, members of the Committee wished to know what the main differences were between the status of the Catholic Church and other religious denominations and how the right to equal treatment of the latter was ensured; how many persons had been recognized as conscientious objectors and on what grounds; whether the right to conscientious objection to military service on the grounds of a person's philosophical beliefs was acknowledged; and whether service as a conscientious objector conferred the same rights and benefits as regular military service. Additionally, they requested information concerning religious assistance to non-Catholic prisoners; the right of parents to bring up their children in accordance with their own beliefs; the scope of the right to seek information enshrined in article 37 of the Constitution; prosecutions, if any, under article 7 of the Television Act; arrangements for apportioning broadcasting time among the various political parties; and the concept of "collective disobedience" in the armed forces.

157. Responding to questions raised in connection with the freedom of religion, the representative of the State party explained that the difference in status between the Catholic Church and other religions stemmed from genuine diversity and could therefore not be regarded as a violation of the principle of equality. A legislative measure had recently been adopted to ensure that all children, irrespective of their religious denomination, could attend moral and religious classes at their school. Children were also excused from attending school on the days of rest and festivals particular to their religion. The principle of equality was also evident in respect of the social security régime applicable to clergy from the Roman Catholic Church and other religions and the granting of tax exemptions to all denominations without distinction. Ministers from other religions were authorized to work in prisons as necessary. The right and duty of parents to bring up their children, under article 36 of the Constitution, covered all aspects of a child's education and moral, civic and social training.

158. The grounds for conscientious objection could be religious, moral or philosophical; the decision whether a person should be recognized as a conscientious objector rested with the courts. Civic service was of the same duration and difficulty as military service and conscientious objectors had the same rights and duties as other citizens. Thus far, 700 people had been recognized as conscientious objectors, mostly on religious grounds.

159. Under article 37 of the Constitution, citizens were entitled to be informed by the authorities and an explicit right of access to official archives and administrative registers had also been added to the Constitution. While there had been no prosecutions as yet under article 7 of the Television Act, criminal proceedings had been brought against a newspaper for publishing an item liable to provoke discrimination or violence against certain social groups. According to article 40 of the Constitution, political parties, trade unions and professional associations were granted a fixed and equitable amount of broadcasting time on the basis of their representativity. The crime of "collective disobedience" required a specific intention to destroy, alter or subvert the constitutionally established rule of law.

Protection of family and children

160. With regard to that issue, members of the Committee inquired whether there was any legislation protecting a family based upon a steady cohabitation without formal marriage; what differences existed in the status and rights of children born in and out of wedlock; and how the Portuguese Government ensured the implementation of articles 60(2)e and 74(3)h of the Constitution. They also wished to receive information on law and practice relating to the employment of minors.

161. In his reply, the representative of the State party said that individuals in a situation of cohabitation enjoyed protections under various laws. The Constitution provided that children born out of wedlock should not be discriminated against and that neither the law nor the authorities could make discriminatory appellations concerning their parenthood. Decree Law No. 496/77 had abolished certain articles of the Civil Code that had discriminated against children born out of wedlock in respect of filiation, adoption and inheritance. Portugal had ratified the European Convention on the Legal Status of Children Born out of Wedlock in 1982.

162. The minimum age for work was 14 years and an employer could not use minors for work which might affect their physical, spiritual or moral development and had to make sure that they received educational and vocational training. Unfortunately, in some areas in the north of the country there were still cases where child labour was exploited but the authorities were attempting to deal with the problem in a realistic and forceful fashion. The phenomenon was, however, quite complex, and measures of differing scope and nature would need to be taken within the overall framework of cultural, social and economic development. There were currently 4 million Portuguese working abroad as migrant workers, and they were provided with legal and social advisory services, medical examinations and other assistance when leaving, after their arrival in the host country, and on their return to Portugal. Study of the Portuguese language and culture abroad was encouraged, particularly within the framework of universities or through the creation of schools for Portuguese emigrants. Portugal had also signed bilateral agreements with the Federal Republic of Germany, Belgium, Spain, France and Luxembourg for the teaching of Portuguese in those countries and had ratified the European Convention on the Legal Status of Migrant Workers in 1976.

Right to participate in the conduct of public affairs

163. With regard to that issue, members of the Committee wished to know whether, in view of article 30(4) of the Constitution, political rights could be restricted under any circumstances and whether any such restrictions were currently in effect; how the freedom of citizens to belong to the political party of their choice could

be accommodated with some of the provisions of the Constitution which appeared to advocate a particular political model - namely, the establishment of a socialist society; and whether the failure to exercise the right to vote had any consequences.

164. In his reply, the representative of the State party said that political rights could be deprived pursuant to a judicial decision and in compliance with the applicable laws. Sentences imposed for certain crimes necessarily involved the loss of some political rights. Voting was not compulsory and no sanctions were imposed for failure to vote. Provisions of the 1974 Constitution relating to "transition to socialism" and nationalizations had subsequently been revised to favour plurality of expression and the achievement of economic, social and cultural democracy.

Rights of persons belonging to minorities

165. With reference to that issue, members of the Committee wished to receive information on the practical measures that had been taken to protect the rights of gypsies and to preserve the *Mirandês* dialect in north-eastern Portugal.

166. In his reply, the representative of the State party said that a 1920 law providing for special surveillance of gypsies and certain regulations, under which searches in gypsy homes had been allowed during the night and without a warrant, had been declared unconstitutional. The conditions of access to education for the most economically and socially disadvantaged groups and, more particularly for gypsy children, had also been improved. *Mirandês* was a language spoken by 15,000 persons in the north-east of the country and represented a rich cultural heritage. In order to safeguard that heritage, optional classes had been established in the primary schools and would soon be offered in the secondary schools.

General observations

167. Members of the Committee thanked the Portuguese delegation for its valuable co-operation and commended the State party for the excellence of its report. They expressed satisfaction with the progress that had been achieved in the human rights field in Portugal within the short time that had elapsed since the return of democracy. The fact that article 7 of the Constitution explicitly raised human rights to a guiding principle of Portugal's international relations was a source of special satisfaction. Members nevertheless considered that their concerns had not been fully allayed, especially with regard to the duration of pre-trial detention. They also expressed the hope of receiving further clarifications of questions relating to the situation of foreigners in Portugal; the status of women; suspension of the exercise of rights during a state of emergency; the obligation under certain conditions for journalists to reveal their sources of information; and in respect of treatment of prisoners. Concern was also expressed over the fact that the Covenant had not been incorporated into the internal legislation of Macao and, in that connection, it was suggested that a separate report on the situation of rights and freedoms in Macao should be submitted to the Committee.

168. The representative of the State party thanked the members of the Committee for their keen interest and assured them that the Committee's comments, especially those on Macao, would be communicated to the authorities.

169. In concluding the consideration of the second periodic report of Portugal, the Chairman again thanked the delegation for its co-operation and for having submitted an excellent report which described clearly the legal framework and the means of application of the Covenant in domestic law and in administrative practice. He also reiterated the Committee's request for a detailed report on the situation in Macao.

Chile

170. The Committee considered the third periodic report of Chile (CCPR/C/58/Add.2 and Add.4) at its 942nd to 945th meetings, held on 6 and 7 November 1989 (CCPR/C/SR.942-SR.945).

171. The report was introduced by the representative of the State party, who said that the approval of the Constitution in 1980 had marked the beginning of a period of transition towards full democracy and towards the modernizing of many aspects of political, economic and social life in Chile. Virtually all the Constitutional Fundamental Acts had now been drawn up and brought into force. He also drew attention to a number of developments of great political significance that had taken place in his country, notably the holding of a plebiscite in October 1988 that had set the stage for competitive presidential and congressional elections to be held on 14 December 1989 and of an additional plebiscite by which sweeping constitutional reforms, including major amendments to Chilean legislation to bring it into line with the provisions of the Covenant, had been approved. All states of emergency had been terminated and there were now no restrictions on rights guaranteed under the Constitution.

Constitutional and legal framework within which the Covenant is implemented

172. With reference to that issue, members of the Committee requested an explanation of the consequences of the publication of the Covenant in the Diario Oficial of 29 April 1989, particularly regarding its direct applicability by courts and other agencies. In addition, information was requested on how the courts would decide on inconsistencies between the Covenant and the Constitution; whether legislation could be challenged if it was at variance with the Covenant; whether an authority had been established to consider the conformity of internal legislation with the Covenant; and whether any legal conclusions had been drawn from its invocation in judicial proceedings.

173. Members also wished to know whether the Constitutional Court had conducted a constitutionality review of the Covenant prior to its publication; whether its constitutionality could now be questioned before that Court; and whether the right of appeal existed in Chile, in particular for people who considered they had been unjustly accused of acts of terrorism. Noting that President Pinochet was to remain in office as head of the armed forces until 1998, members requested clarification of the implications of the Government's statement that if the opposition won the forthcoming election and repealed the Amnesty Law serious consequences would ensue.

174. In response to questions raised by members of the Committee, the representative of the State party said that the Covenant had been considered as being in force and applicable ever since its ratification by Chile in March 1976 and that the delay in its publication in the Diario Oficial was attributed to

procedural factors. Although certain provisions of the Constitution had previously been at variance with the Covenant that situation had now been remedied through the introduction of constitutional amendments. The Constitution was now fully in line with the Covenant, which had acquired the force of internal law since its publication but had not been invoked before the courts during 1989. In the event of a discrepancy between the Constitution and an international instrument ratified by Chile, the relevant Constitutional provision prevailed, in principle, until it had been amended. The Constitutional Court ruled on the constitutionality of fundamental laws and on legislation whose constitutionality was in doubt. The Covenant's constitutionality had not been questioned and had not been raised before the Court. Since there was no conflict between the Constitution and the Covenant the courts were obliged, particularly since its official promulgation, to implement its provisions.

175. With reference to the right of appeal, the representative said that the appeals procedure, which had been limited under the states of emergency, was now being fully observed. The amended Constitution provided that such observance would continue in the future, even in times of public emergency, and both the de jure and de facto aspects would henceforth be the responsibility of the courts and not of the executive. The Amnesty Law applied without discrimination to all those who had committed offences during the period 1973-1978. The courts had had to decide whether such offences should be investigated and those responsible identified even though they could not be punished. The matter had eventually been brought before the Supreme Court which had decided that no legal action whatsoever could be taken in respect of such cases and that, in effect, such offences were deemed not to have occurred. While that decision was not binding on other courts, it was certain to influence them.

State of emergency

176. In connection with that issue, members of the Committee requested clarification of the practical consequences of the lifting of the states of emergency asking, in particular, whether any restrictions had been placed on the rights of persons returning from exile, particularly on their freedom of movement; whether the Constitutional provisions covering states of emergency that were in conflict with the Covenant would be modified now that it had been published; whether measures covered by the twenty-fourth transitional provision of the Constitution would remain in force until March 1990; whether the cases of persons expelled from the country would be reviewed; whether, under article 40 of the Constitution, the National Security Council could veto the declaration of a state of emergency but not its termination; whether the remedy of amparo was applicable under states of emergency and disaster; and whether under the amended Constitution a court could decide if a declaration of a state of siege was improper.

177. In his reply, the representative of the State party explained that expulsion measures no longer applied after the lifting of the states of emergency and any exiled person now had the right to return to Chile. Indeed 41.2 per cent of those expelled had done so, a commission had been established to help those returning to the country, and many returned exiles were now standing as candidates in the forthcoming elections. The twenty-fourth transitional provision could only be applied during a state of emergency. As the state of emergency had ended, the measures under that provision were no longer in force although the provision would not officially be terminated until March 1990. Measures affecting expelled persons were contained in the Constitution itself and did not expire with the lifting of

the state of emergency; however, the relevant constitutional provision had now been repealed. The approval of the National Security Council was needed to declare a state of emergency and of Parliament to declare a state of siege. The President needed authorization from these bodies for the adoption of such exceptional measures but not for their repeal once the situation had returned to normal. Restrictions on the remedy of amparo resulting from a state of emergency would be ended by the constitutional reforms. Individuals could appeal to courts concerning measures adopted during a state of siege.

Right to life and prohibition of torture

178. With regard to that issue, members asked whether there had been any complaints of alleged torture or inhuman treatment since the submission of Chile's second periodic report, whether such allegations had been investigated; and what steps had been taken to prevent the recurrence of such acts. Confirmation was also sought as to whether there had been any complaints of alleged disappearances during the period under review and whether such complaints had been investigated. Referring to the latest report by the Special Rapporteur of the Commission on Human Rights, members wished to know how many people had been found responsible for the complaints of torture referred to in the report, what penalties had been applied to them, and what measures the Government had taken to provide compensation to the victims. Concerning the functions of the Advisory Commission of the Ministry of the Interior, it was asked whether the Commission was truly independent and whether it could refer matters to the courts or was merely an advisory body.

179. With reference to the agreements between the Government and the International Committee of the Red Cross (ICRC), members asked whether the Government was ready to authorize ICRC representatives to visit detainees held incommunicado during the 10-day period provided for in the Anti-Terrorist Act; whether it was prepared to reduce the length of such incommunicado detention; whether the right of access to detainees by the ICRC applied to cases of detention ordered by the military courts; and whether the agreements with the ICRC and its reports would be published.

180. Noting that the powers of the National Information Agency (CNI) to maintain detention centres had been terminated by Act 18,623, members wished to know what other powers the Agency possessed and whether their officials could function in detention centres other than those permitted prior to the promulgation of the Act in June 1987.

181. In addition, members wished to know whether, since the lifting of the states of emergency, there had been any changes in the regulations governing the use of firearms by the police and security forces; whether there had been any allegations of official involvement in paramilitary groups and, if so, whether such allegations had been investigated; whether the death penalty had been lifted for crimes connected with the state of emergency; whether the number of executions had been reduced; and whether Chile was moving towards the total abolition of capital punishment. They also asked whether abortion was considered a criminal offence in Chile and punished in all cases and how many abortions were carried out each year.

182. Responding to questions raised by members, the representative noted that the 18 complaints of torture or ill-treatment which had been received since 1984 had all been reported in the media. The agreements with the ICRC were concluded partly with the aim of preventing the recurrence of such acts. The relevant recommendations in the report of the Special Rapporteur had been noted and steps

had been taken to remedy the situation, particularly by empowering the uniformed police (carabineros) to receive complaints of alleged torture.

183. Under the agreements with the ICRC, representatives of the Red Cross received a daily list of all detainees and were free to arrange medical examinations for them, including those being held incommunicado. The ICRC reports submitted to the Government were confidential, in accordance with the ICRC rule applicable in all countries. The representatives held regular co-ordination meetings with police authorities to study the reports, assess the problems, and suggest measures to prevent illicit practices. The Anti-Terrorist Act provided for an extended period of incommunicado detention for terrorists, but this could be amended by the new Parliament following the elections. A proposal was currently before the Ministry of Justice to change the length of incommunicado detention.

184. Since the submission of the second periodic report, seven cases of alleged disappearances had been brought to court, four of which had been settled with three remaining under investigation. If convicted in court of such offences the persons responsible would not be entitled to lodge an appeal under the Amnesty Law. Paramilitary groups were illegal but there had been some complaints following the death of three persons abducted by such a group in September 1987. The President of the Court of Appeal was investigating the case.

185. The Advisory Commission of the Ministry of the Interior was established in 1986, following a recommendation by the Special Rapporteur that the creation of an independent body with powers to guarantee full enjoyment of human rights was essential. The Commission was composed of former members of the Supreme Court, trade-union leaders, doctors and jurists. It had no executive power but could inspect and report on all places of detention.

186. The use of firearms was subject to the provisions of the Penal Code, which had not changed under the state of emergency and included penalties for the unjustified use of firearms. The death penalty had not been applied since 1982, when one member of the CNI and a member of the carabineros had been executed for torture and abuse of authority. Chilean legislation protected the life of an unborn child from the moment of conception and abortion was an offence even for therapeutic purposes, although in some cases the doctor was not held responsible. Punishment was not directed at the pregnant woman, who was generally considered as a victim, but rather at the persons who practised abortion.

Liberty and security of the person and treatment of prisoners and other detainees

187. In connection with that issue, members wished to know what the maximum time-limits were for remand in custody and pre-trial detention; whether all victims of unlawful arrest or detention had an enforceable right to compensation; whether prison staff and prisoners were informed of the United Nations rules for the treatment of prisoners and conduct of law enforcement officials and doctors; what procedures had been established for receiving and investigating complaints concerning prison conditions; and what would be the consequences of the dismantlement of the CNI.

188. In his response, the representative of the State party explained that prison establishments and police stations were the only places of detention in Chile. All cases of pre-trial detention had to be immediately presented to the courts, which had five days in which to decide if a trial was necessary. Where this was not the case the detainee had to be released immediately. Under the Anti-Terrorist Act,

however, pre-trial detention could be extended by up to 10 days in certain cases. Article 19 of the Constitution ensured compensation to persons unlawfully arrested for material damage suffered, the amount of which was to be determined by the courts. In addition to this constitutional guarantee, the right to compensation was also provided for in the Code of Civil Procedure. Prison staff and police officials had been informed of the international standards covering the treatment of prisoners. Such standards were also included in the curriculum of the law faculties and prisoners could learn of them through their lawyers. The rules of international law on the subject were also part of the curriculum of medical faculties. Agreements had been set up with the ICRC to look into prison conditions, and their representatives submitted regular and detailed reports to the Government for transmission to the competent ministries. It was true, however, that the ICRC representative in Santiago had claimed that the recommendations in the reports were not always put into effect.

189. The CNI had not yet been officially dissolved but the legislature was currently contemplating a bill for its dissolution. Under Act 18,623, the CNI had been deprived of its powers to maintain detention centres. When the Agency was officially dissolved its functions would be transferred to the Police Department.

Right to a fair trial

190. With reference to that issue, members of the Committee asked a number of questions concerning the military courts, in particular whether they were independent, in the sense of article 14 of the Covenant; why so many civilians were still being tried by such courts; why periods of detention were so lengthy; why the jurisdiction depended on the status of the alleged victim rather than, as in most legal systems, on that of the alleged offender; how often, and against whom article 284 of the Code of Military Justice was applied; whether the trial by military courts of civilians alleged to have injured members of the security forces was compatible with article 14 of the Covenant; and whether military jurisdiction also applied to members of the armed forces who, while off duty, were injured in an altercation with a civilian.

191. Members also wished to know what was the constitutional status of the judiciary; how many Supreme Court judges there were and what were their qualifications; what action had been taken on the recommendations for the establishment of a judicial police force to help protect magistrates investigating human rights violations; whether judges investigating human rights violations were being penalized and lawyers harrassed for defending opponents of the Government; whether there were adequate guarantees to ensure that lawyers could assist their clients effectively, in accordance with article 14 of the Covenant; and what steps had been taken by the Government to investigate alleged human rights violations in the long-established Colonia Dignidad and whether they had resulted in corrective measures being taken.

192. Clarification was also sought concerning the appeals procedures under the current legal system and why appeals were so frequently rejected; on the scope of Act 18,667, which seemed to permit the Commander-in-Chief of the armed forces to withhold evidence from the courts for security reasons; and on the relationship of the National Security Council to the Constitutional Court.

193. Responding to the questions raised, the representative of the State party explained that the military courts administered justice pursuant to the procedural and material standards of the ordinary law and subject to the individual guarantees set out in the Constitution. Such courts formed part of the legal system, were subject to supervision, guidance and correction by the Supreme Court, and were independent both administratively and in the dispensation of justice. While it was true that a high percentage of offences by civilians were tried in these courts, many involved only minor infringements of law falling within military jurisdiction. The length of some of the investigations was indeed excessive but this was because some of the cases were of great complexity. Under the Anti-Terrorist Act, a civilian could be tried by the military courts only if the victim was a member of the armed forces or uniformed police, or if there had been an attack on a military or police establishment. An offence by a member of the armed forces or uniformed police while off duty against a civilian would be regarded as having been committed in a private rather than a military capacity and would not be tried by the military courts. The practice of subjecting civilians to military jurisdiction had been strongly criticized within the country in recent years and draft legislation was currently under consideration aimed, inter alia, at restricting the jurisdiction of the military courts to members of the armed forces. The Government recognized that there were still some abuses in the legal system and was doing its best to overcome them.

194. The qualifications of all judges and legal officers were set out in the Courts Organization Act, which had been in force for 50 years and had the status of a fundamental law. The 19 judges of the Supreme Court were all fully-trained lawyers appointed by the President from among senior officials of the judicial system recommended by the Supreme Court. The question of a special police force to protect the judiciary had been under discussion for some years but it was hoped that with the end of military rule such a force would not be necessary. As to the question concerning the penalization of certain judges, those involved had not been punished for investigating crimes but for attempting to publicize cases or for refusing to accept a Supreme Court decision. Defence lawyers who encountered obstacles in seeking to assist their clients could protest and those responsible would be punished.

195. Concerning the appeals procedures, it was important to distinguish between appeals lodged before 1988, largely relating to measures in force under the state of emergency and which were often rejected, and those lodged following the Constitutional reforms, which were much more likely to be met with a positive response. Act 18,667 had nothing to do with the withholding of evidence but was designed to strike a balance between the protection of documentary evidence that was secret and the legitimate need for information. If required, a Commander-in-Chief could be compelled by the Supreme Court to provide evidence. There was no relationship between the National Security Council and the Constitutional Court and the latter was not part of the judicial system. That Court was completely independent and had as its basic function the ascertainment of the constitutionality of proposed laws. Pursuant to a constitutional amendment, the composition of the Constitutional Court had been modified to include two members nominated by the National Security Council. The questions of alleged human rights violations in Colonia Dignidad appeared to involve a problem between the Federal Republic of Germany and certain of its citizens living in an agricultural settlement in Chile. No attempt had been made to pursue the matter through the Chilean courts.

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Freedom of movement

196. In connection with that issue, members of the Committee wished to know whether all persons sentenced to exile had benefited from the lifting of the ban on re-entry and whether all those who had wished to do so had actually returned to the country. They also requested clarification of the measure of banishment under the State Security Law.

197. In his response, the representative of the State party said that as a result of the latest constitutional reforms the Government could no longer exile citizens, even during a state of emergency, and that any exiles who wished to return to Chile were free to do so. A special commission, working with the Office of the United Nations High Commissioner for Refugees, had been set up to help individuals with any problems they might have on their return. Internal banishment had been an exceptional measure used during the state of emergency: individuals had been confined to one place and had been obliged to report regularly to local police stations but were otherwise free to do and to say what they liked. The law was still in force but was very rarely resorted to.

Right to privacy

198. Concerning that issue, members of the Committee wished to know what practical measures had been taken by the Government to prevent censorship of correspondence and communications; whether legislation existed to protect information contained in computer data files; and whether CNI was active in that field. In addition, they requested information concerning freedom of correspondence and the law and policy relating to court orders for the surrender of medical records in criminal cases.

199. In his reply, the representative of the State party said that a new bill was being drawn up to protect the confidentiality of personal data files. Lawyers and doctors were obliged by law to maintain absolute confidentiality on matters relating to their profession. However, they could be ordered to make certain information known where the superior interests of justice so required.

Freedom of opinion and expression

200. With reference to that issue, members wished to know whether the amendments to Act 18,313, recommended by the Commission of the Press Association, had been acted upon; whether the charges brought against journalists by the armed forces in the military courts had been withdrawn; how article 284 of the Code of Military Justice had been interpreted by the courts; whether unconstitutional parties could be deprived of freedoms provided for in article 19 of the Covenant; and whether Act 18,662, which prohibited the dissemination of information about the Communist Party and one of the socialist parties in Chile, had been repealed; whether the private sector had any role in television, which appeared to be a virtual State monopoly, and whether opponents of the Government were allowed air-time on television.

201. In his reply, the representative of the State party said that following criticism of the amendments to Act 18,313 by various media associations a new draft Press Act had been elaborated and would soon be submitted to the legislature. The interpretation by the Chilean courts of article 284 of the Code of Military Justice was that the intent to insult had to be demonstrated and proved before an offence could be considered to have been committed. Charges against journalists in the

ordinary courts had been dropped and the proceedings dismissed but accusations brought before military courts by individuals could not be withdrawn. However, the journalists involved had been released on bail and proceedings against them would probably be dismissed. The concepts of complaint and plaintiff did not exist in military justice and individuals could not lodge complaints, but they could intervene in the proceedings as the injured party.

202. While unconstitutional political parties could not exercise the rights in article 12 of the Constitution, their individual members enjoyed all constitutional rights and freedoms. Parties that had been refused registration could appeal to the Constitutional Court. The ban on the Communist Party and one of the socialist parties was still in force, but their leaders had formed other parties and were even standing for Parliament. The Communist Party had been banned because its programme authorized the use of every possible means to gain power and affirmed other principles incompatible with democracy, but if another communist party submitted a programme that was in conformity with democratic principles there should be no problem in obtaining registration. The Government controlled only one television channel, the seventh. The other channels belonged to national and provincial universities that were private entities. Access to television by political parties was banned except during the 30 days preceding polling, when all candidates were entitled to free air-time. State monopoly of communication was excluded by law and article 19 of the revised Constitution guaranteed uncensored freedom of information, except for certain restrictions designed to prevent their wrongful use.

Freedom of assembly

203. With regard to that issue, members of the Committee asked whether there had been any allegations of violence against peaceful and unarmed demonstrators in Chile and, if so, whether such allegations had been investigated, and with what result.

204. In his reply, the representative of the State party said that freedom of assembly was exercised in Chile without any limitations. Any person wishing to hold a meeting could do so by informing the authorities where it would take place and obtaining the relevant authorization. If illegitimate acts occurred during a meeting, it could be dissolved by resort to water cannon, tear gas and, in case of serious crimes or armed aggression being committed, by resort to the use of firearms. No specific complaints had been made in this regard, except for one case in August 1989 where three policemen used threatening behaviour to a crowd without justification. They were subsequently arrested, tried and sentenced.

Right to participate in the conduct of public affairs

205. With reference to that issue, members of the Committee wished to receive information on the impact of the repeal of article 8 of the Constitution on persons affected by decisions that had been taken pursuant to that article and about the provisions of the Political Parties Act, prohibiting parties from giving instructions to their representatives in Congress. They also wished to know whether there were any restrictions in law and in fact on the right of persons to be elected and of all political parties to take part in elections; how the presidential election campaign was proceeding in terms of equal opportunities for the Government and the opposition; and whether the options in the recent plebiscite had been given equal media coverage.

206. In his response to the questions raised, the representative of the State party said that the only person affected by article 8 of the Constitution had been the leader of one of the socialist parties, which had advocated violence as a legitimate means of obtaining power, and had been declared unconstitutional. That individual had been tried and convicted after a year-long public trial. All penalties provided for under article 8 had been halved and a rehabilitation procedure had been established that was open to anyone who had been affected by the application of article 8. The provision of the Political Parties Act in question related to the fact that in earlier years congressional representatives had largely acted on the basis of immediate directives from their parties, often without regard to the wishes of their electors; the provision was designed simply to remind parliamentarians that they owed loyalty both to their electors and to their party. The media had complete freedom to report on the campaign in the same free and open manner as for the plebiscite of October 1988. In the final month of the presidential campaign, all political parties would be allocated free air-time on an equitable basis and in proportion to their size.

Rights of persons belonging to minorities

207. In connection with that issue, members of the Committee wished to know whether there were any indigenous groups that were not fully integrated into Chilean society and, if so, what measures had been adopted to ensure that such groups enjoyed the rights guaranteed under the Covenant.

208. In his response, the representative of the State party said that the only minority group still in the process of integration was the Mapuche, the indigenous people from the south of the country. This process had been a difficult one and the Mapuche, as a community, had been the victims of abuse. The Government's aim was to integrate them into society and to respect their customs and traditions, to which end a series of measures had been taken. Article 8 of the Constitution, as amended, now provided specific legislation prohibiting any incitement to racism and racial or other social discrimination. Copies of the report recently presented by Chile to the Committee on the Elimination of Racial Discrimination gave a highly detailed analysis of the situation of the Mapuche.

General observations

209. Members of the Committee expressed appreciation to the delegation of the State party for its candour and competence in responding to the Committee's questions and for having engaged in a dialogue with the Committee that had been constructive and interesting. Members were unanimous in expressing satisfaction with the significant progress that had been made in restoring the democratic process in Chile, notably through such steps as the recent plebiscite, the forthcoming presidential elections, the adoption of constitutional reforms, the lifting of the states of emergency and allowing the return of many exiles. They were equally unanimous, however, in expressing deep concern and anxiety about many problems in law and practice that still remained. One important source of concern was the persistence of the role of military courts in trying civilians, which was an anomaly and something utterly negative. The excessive length of pre-trial periods of detention and, in particular, the continuing allegations of torture were also sources of deep disquiet. Other areas of serious concern included the lack of full independence of the judiciary, insufficient respect for the rights to freedom of opinion, association, expression and information; and the role of the armed forces, whose powers derived from the provisions of a Constitution that had not been put to

a vote. The 12-year delay in publishing the Covenant, which had prevented Chilean citizens from invoking its provisions before the courts, was also criticized and members urged that both the Covenant and the Committee's observations at the present meeting should be widely disseminated to the Government as well as to the public at large. In view of the virtual unanimity within the Committee in respect of the foregoing concerns, members expressed the hope that the Government of Chile would draw the necessary conclusions and would regard the comments that had been made as a useful contribution to the commendable efforts it had already initiated.

210. The representative of the State party said that the meeting had been profitable and useful. His country was coming to the end of a long and painful process during which mistakes had undoubtedly been made. However, its ultimate goals - which were a return to a democratic system, the restoration of the primacy of law, and the rebuilding of the economy - had never been forgotten and Chile would try to make additional progress toward full respect of the provisions of the Covenant. All the comments that had been made during the debate would be transmitted to the Government of Chile.

211. In concluding the consideration of the third periodic report of Chile, the Chairman expressed the conviction that the dialogue that had occurred would help the Chilean authorities in giving full effect to the human rights established in the Covenant and noted that the rejection of the military régime in the recent plebiscite encouraged optimism about future developments in that regard.

Argentina

212. The Committee considered the initial report of Argentina (CCPR/C/45/Add.2) at its 952nd, 955th and 956th meetings on 19 and 21 March 1990 (CCPR/C/SR.952, SR.955 and SR.956).

213. The report was introduced by the representative of the State party, who emphasized that Argentina was committed to promoting and protecting human rights and had established machinery for that purpose. It was difficult, however, in view of the economic crisis prevailing in Argentina to further promote and protect economic, social and cultural rights. The representative noted that the Government had made the communications referred to in article 4, paragraph 3 of the Covenant in respect of states of siege declared in Argentina in May 1989. Argentina had also informed the United Nations and had provided details regarding the rights which had been temporarily suspended during the state of siege after that exceptional measure had been lifted.

214. Members of the Committee welcomed the State party's report but expressed regret that, whereas it gave a clear idea of the welcome developments since the end of the military dictatorship in Argentina, not enough information had been provided on factors and difficulties affecting the implementation of the Covenant.

215. In connection with article 2 of the Covenant, members of the Committee wished to receive additional information regarding the status of the Covenant in domestic law. In particular, they wished to know whether the Covenant took precedence over the national Constitution, the provincial Constitutions and the national laws and what the procedure was for eliminating any discrepancies between an international human rights instrument and domestic legislation. In that regard, clarification

was requested of the statement in the report that rights protected under the Covenant were already protected under the Constitution, particularly in view of the fact that Argentina had just emerged from a period during which the Constitution had not been applied in respect of the rights and freedoms it contained. It was also asked whether there had been any specific cases in which alleged violations of rights by the authorities had been declared unconstitutional; whether courts other than the Supreme Court were competent to decide on such matters, what the relationship between administrative and judicial remedies was; and whether there were any rights and guarantees other than those listed in the Constitution.

216. Further information was also sought on the organizational structure and functions of the Under-Secretariat of Human Rights and on the number, nature and dispositions made of the complaints that had been received by that body. It was also asked what specific action had been taken to raise public awareness of the provisions of the Covenant, particularly in the police and security forces and among minority groups; what was the scope of the term "inhabitant" as used in Argentine law; and whether article 20 of the Constitution, setting forth the rights of aliens, was in conformity with article 2 of the Covenant.

217. Additionally, members expressed grave doubts as to whether the Law of "Punto Final", the Law of "Due Obedience" and the presidential pardons of October 1989 were compatible with article 2, paragraph 3, and article 9, paragraph 5 of the Covenant and sought further information as to the reasons that had led the Government to adopt those measures. They also wished to know what remedies were currently available to victims of offences committed by the military for which amnesty had been granted. It was further asked whether the provisions of those laws had been scrutinized by the courts; how many investigations into alleged violations of human rights had been completed and with what results; what the present position was with regard to investigations not yet completed; and why the Attorney General had issued instructions to the prosecutors not to challenge the constitutionality of the presidential pardons.

218. In connection with article 3 of the Covenant, members wished to know whether the Under-Secretariat for Women had received any complaints about discrimination and, if so, what the main subjects of such complaints had been. It was also noted that the concept of there being individuals to whom particular respect was due, enshrined in some provisions of Argentine legislation such as articles 42 or 80 of the Penal Code, seemed to be rooted in archaic principles and appeared to be clearly discriminatory.

219. With regard to article 4 of the Covenant, members of the Committee requested clarification of the provisions governing the state of siege in Argentina and requested information, in particular, on the state of siege that had been declared since the return of civilian rule. They also wished to know what the maximum duration of a state of siege was; what guarantees were available during a state of siege to a person whose rights had been infringed; whether there was any explicit legal provision to guarantee that there could be no derogation from the basic rights laid down in article 4, paragraph 2, of the Covenant; whether habeas corpus and the amparo procedure remained applicable during a state of siege; whether the mere probability of internal disturbances could justify a declaration of state of siege; and what control was exercised by the legislature over the powers accorded to the President during a state of siege.

220. In connection with article 6 of the Covenant, information was requested about cases of enforced or involuntary disappearances in Argentina that had occurred before Argentina became party to the Covenant and about the results of the relevant investigations. Referring to the rules and regulations governing the use of firearms by the police and security forces, members asked how many officers had been found guilty of offences and disciplined for them; what the penalties had been; and whether the deaths of persons participating in peaceful demonstrations were automatically investigated. Information was also sought on measures taken in reaction to the attack on La Tablada barracks in January 1989 and, in that connection, it was asked whether any complaints of torture were currently under investigation by the Government. Additionally, members requested details about the implementation of legislative measures concerning abortion.

221. With regard to articles 7 and 9 of the Covenant, members wished to receive clarification of the meaning of corporal punishment for "failure to carry out duties of family assistance", which appeared to be incompatible with article 7 of the Covenant; on legal provisions and court practice concerning compensation for unlawful arrest or detention; and on a specific recent Supreme Court decision concerning _habeas corpus_. Members also wished to know how soon after arrest a person could contact a lawyer; and whether there were any time limits within which a detainee had to be brought before a judge. In the latter connection, it was noted that article 255 of the Code of Penal Procedure, providing for a defendant to be informed of the reason for the proceedings and for his imprisonment only after making a statement before the judge, seemed to be incompatible with article 9 of the Covenant.

222. With regard to article 14 of the Covenant, members of the Committee wished to receive additional information on the organization of the civil and military court systems; on the status of judges, and on the steps which had been taken to strengthen the independence of the judiciary. Clarification was also sought of the provision according to which appeals on administrative cases were to be lodged with the same body which had ruled in the first instance; of the possibilities for challenging administrative decisions before the courts; and of the scope of Argentina's reservation to article 15, paragraph 2, of the Covenant, in the light of existing imperative international law. It was also inquired whether the right to seek legal assistance could be denied to a defendant during the preliminary and investigatory stages of proceedings; how the right to a public trial was ensured in Argentina; what procedures were used by military courts and, in particular, whether their competence was determined _ratione materiae_ or _ratione personae_; and whether remedies were available to any civilians who had been sentenced to death by military courts during the period of military rule.

223. Members of the Committee wished to receive further information on the implementation of article 17 of the Covenant and wished to know, in particular, under what circumstances telegraph and telephone tapping was authorized.

224. Regarding article 18 of the Covenant, members of the Committee wished to know what the procedures for legal recognition and inscription of religious denominations were; how many non-Catholic denominations had been registered; whether, once registered, the latter were equal under the law with the Roman Catholic Church and also enjoyed financial privileges; what had been the consequences of the designation of the Roman Catholic Church as a public legal person; how Law No. 21.745 could be reconciled _de facto_ with article 18 of the Covenant; and whether any provisions had been made for conscientious objectors.

225. With regard to articles 19 and 20 of the Covenant, members of the Committee inquired how, in practice, journalists were guaranteed access to information; to what extent officials were legally bound to provide information to the press; whether there were any limitations imposed on the activities of non-registered journalists; and whether anti-semitism still persisted in some circles despite anti-discrimination legislation. It was observed that Argentine law did not seem to comply with the provisions of article 20 of the Covenant since no provisions had been made for the prohibition of war propaganda and members also sought clarification of article 22 of the Constitution relating to the crime of sedition.

226. In connection with articles 21 and 22 of the Covenant, members of the Committee wished to know what legal restrictions, if any, could be imposed on freedom of assembly; how the exercise of freedom of assembly and freedom of association was guaranteed in practice; and what the prerequisites were for forming associations and political parties.

227. With regard to article 24 of the Covenant, further information was sought on the situation of kidnapped and abducted children and about any plans to maintain the data bank that had been established on such children, and on the reasons for the reduction of penalties for murdering or abandoning children in order to conceal the dishonour of the mother or of other members of the family.

228. Regarding article 25 of the Covenant, it was asked whether there were instances in which foreigners had actually voted and been elected in the municipalities in which they lived and whether Argentina planned to change the religious test for eligibility for the office of President or Vice-President, which it had acknowledged to be contrary to article 25 of the Covenant. Members also questioned the compatibility with the Covenant of the requirement that senatorial candidates possess a certain minimum income and requested clarification of the statement in the report that the Constitution established political rights "in implicit form".

229. Lastly, with regard to article 27 of the Covenant, members of the Committee wished to receive additional information on the aboriginal communities referred to in paragraph 246 of the report; on the right of indigeneous groups to practise their own religion and use their own languages; and on the activities of the National Institute of Indigenous Affairs since its establishment in 1985.

230. Replying to questions raised by members of the Committee concerning article 2 of the Covenant, the representative said that the two international human rights covenants, together with the American Convention on Human Rights, had been incorporated into Argentine law between 1984 and 1986. Pursuant to article 31 of the Constitution, the Covenant ranked below the Constitution, was on an equal footing with national laws and took precedence over provincial laws. Conflicts between national law and international law were resolved by applying the general principle that a subsequent rule took precedence over a prior rule on the same subject. The Covenant could be invoked in any jurisdiction, and any court could directly apply its provisions. Victims of human rights violations had recourse to all civil and criminal remedies provided in the national judicial system, including administrative remedies if applicable. The Argentinian system did not have a specialized court for constitutional review and that function was performed by the Supreme Court of Justice through the extraordinary appeal procedure. All executive and legislative acts, with the exception of acts which were merely discretional or

ministerial, were subject to such constitutional review, if and when there was a complaint by a litigant alleging unconstitutionality. By virtue of article 100 of the Constitution, the Supreme Court was the final authority in interpreting the Constitution.

231. Concerning the questions relating to the Law of "Due Obedience", the Law of "Punto Final" and the presidential pardons of October 1989, the representative recalled that the Covenant only applied to events occurring on or after the date of its entry into force and that, consequently, the provisions of the Covenant did not apply to Acts 23.492 and 23.049. In its judgment of 3 July 1987, the Supreme Court had declared Act 23.521 to be constitutional. While that Act placed limitations on criminal prosecution of individuals who had committed crimes on orders of their superiors it did not imply the denial of the facts or of the criminality of the acts and the guilt of those who had committed them. Neither did the presidential pardon eliminate the crime itself; it merely prevented the execution of the sentence. The decision to exercise clemency had been based on the fact that the events of the past two decades had constantly jeopardized the maintenance of public order within Argentina and its purpose was to bring peace to all sectors of Argentinian society. Nothing in Argentina's legislation prevented the continuing investigation of the facts and, indeed, such investigations were being pursued. Seven officers of the armed forces had been sentenced for human rights violations and, in early October 1989, 34 other persons were placed on trial, many of them for several human rights offences.

232. In reply to questions raised by members of the Committee concerning article 4 of the Covenant, the representative stated that a state of siege could be declared in the event that internal disorder or foreign attack endangered the operations of the Constitution and of the authorities created thereunder. A state of siege was declared for a limited period, but the exact duration of that period did not have to be specified. During a state of siege, the power of the President of the Republic was limited to arresting or displacing individuals and he had no power to convict them of any criminal offences. The rights provided for under article 4, paragraph 2, of the Covenant continued in force. The existence of a state of siege did not imply the suspension of the Constitution or any weakening of the division of powers among the executive, legislative and judicial branches. According to a Supreme Court decision taken in 1978, notwithstanding the fact that taking measures such as the arrest and transfer of persons was provided for under the Constitution, officials were not exempt from possible criminal liability when their actions constituted an offence under the law. The legality of the declaration of a state of siege could be reviewed, under Act 23.098 of 1984, as part of the procedure of habeas corpus. Both amparo and habeas corpus could be invoked during a state of siege. The enactment of a law regulating the exercise of the powers of the executive branch with respect to the imposition of a state of siege was currently under consideration.

233. Responding to questions raised by members concerning article 6 of the Covenant, the representative noted that, since the restoration of democracy, successive constitutional Governments had provided the Working Group on Enforced or Involuntary Disappearances with information concerning reported cases of forced disappearances. The National Commission on the Disappearances of Persons (CONADEP) and the Public Prosecutor's Office had investigated cases that had been brought before the competent Federal Appeal Chamber. Three such cases, of special significance, involved persons who had been detained by the military régime and who had subsequently claimed compensation for illegal detention. They showed that

despite the Law of "Due Obedience" and the Law of "Punto Final" it was possible to continue litigation until compensation was awarded. Referring to the attack on La Tablada military barracks, the representative said that 20 persons had been brought to trial and that a decision had been handed down on 5 October 1989. Both the Office of the Public Attorney and the defence attorneys had lodged appeals against that decision, the latter alleging mistreatment or unlawful use of force by the police - allegations that were all currently under investigation.

234. With reference to questions raised by members of the Committee concerning article 9 of the Covenant, the representative said that, under the law, detainees had to be provided with counsel immediately and that a judge had to be informed of the alleged violation and had to be provided with all relevant documentation within 24 hours of an arrest. A detainee had the right to make a telephone call indicating his whereabouts, which enabled a lawyer to begin representing him. The remedy of amparo was admissible in connection with any act by the authorities which infringed, restricted or arbitrarily jeopardized any right recognized by the Constitution. The right of habeas corpus was invoked when freedom of movement had been restricted by the public authorities without a warrant or when an arrest had been made illegally.

235. Turning to questions raised by members of the Committee concerning article 14 of the Covenant, the representative of the State party said that Argentina still followed the practice of written proceedings, which provided for a limited period of secrecy. A proposed amendment to the existing law, which aimed at institutionalizing verbal and public proceedings, had not been adopted. However, the Code of Military Justice and the Law for the Defence of Democracy now provided for public hearings before a court of charges, evidence and expert testimony. Journalists had direct access to courtrooms, the persons under trial, and to judges and attorneys. Referring to the competence of military courts, the representative explained that, in 1984, the Congress had introduced amendments to the Code of Military Justice providing for a transitional régime in judging offences committed during the repression. The jurisdiction of the military courts had been reduced to strictly military matters which further limited the possibility of a civilian being judged by a military court for civil offences. Additionally, there was a recourse of mandatory appeal to the competent Federal Appeal Chambers against decisions handed down by military courts concerning military offences in time of peace.

236. Responding to questions raised under article 18 of the Covenant, the representative said that there was freedom of worship in Argentina but not equality of worship. The Government provided financial aid for helping to train members of the Catholic clergy and for the support of bishops and attributed special value to the Roman Catholic Church, which represented the majority of the population. While the Catholic Church enjoyed pre-eminence and enjoyed the legal status of a public body corporate whereas other religious denominations were allowed to function only as associations, it was not a state church. Discussions were currently under way with a view to granting a special legal status to non-Catholic religions. Under Act No. 21.745, all non-Catholic religious institutions and organizations were required to register. Registration itself was a simple procedure and once a group was registered it was allowed to carry out its activities anywhere in the country and could request a tax exemption. So far, approximately 2,730 religious groups had registered. A bill providing for regulations concerning conscientious objectors had been submitted to the Congress and on 18 April 1989 the Supreme Court had recognized the principle that the obligation of military service could be met without taking up arms. Exemptions from military service were granted on a

case-by-case basis to seminary students belonging to Jehovah's Witnesses who presented the necessary certificates from the relevant institutions.

237. With reference to questions raised by members of the Committee concerning article 20 of the Covenant, the representative said that discrimination of any kind was essentially incompatible with the provisions of the Constitution. Under the Criminal Code, racial or religious hatred was considered as an aggravating circumstance in respect of various crimes. The law regulating the activities of political parties prohibited the use of party names containing words that expressed racial, class or religious hostility, or that might provoke such hostility.

238. With regard to article 24 of the Covenant, the representative stated that the Genetic Data Bank carefully collected and stored genetic data on family members of disappeared persons. Through the Bank, it had been possible to return many children to their natural families.

239. In reply to questions raised under article 25 of the Covenant, the representative said that, apart from article 76 of the Constitution, which provided that a person must belong to the Roman Catholic Church in order to be elected President or Vice-President of the nation, there were no other religious requirements for holding high office. Although proposals to amend the Constitution could be envisaged in respect of article 76, it could not be said categorically that the requirement contained therein was contrary to the Covenant.

240. Responding to questions relating to article 27 of the Covenant, the representative stated that according to the latest census, taken in 1966, there were 302,000 indigenous inhabitants in Argentina. Their rights were being protected and their traditions were being preserved.

General observations

241. Members of the Committee thanked the representative of the State party for the co-operative and open spirit in which she had answered many of their questions. They observed that while it was evident that the Government of Argentina was seriously committed to the protection of human rights which had been violated during the military dictatorship, there was nevertheless some cause for concern regarding the effective implementation of the Covenant in Argentina. Members voiced concern especially in respect of the compatibility of the Law of "Due Obedience" and the Law of "*Punto Final*" with the Covenant and of the negative precedents that those measures could set and expressed the hope that those laws would not jeopardize the rights of victims to reparation. They also hoped that the Government would make further efforts and take appropriate action in respect of the disappearances that had occurred before Argentina had become party to the Covenant. References were also made by members to the use of excessive force by the police; the privileges enjoyed by the Roman Catholic Church; and to the guarantees relating to the prevention of abuse of power by the authorities, particularly in respect of the practice of torture and during a state of siege.

242. The representative of the State party expressed appreciation to the Committee for its comments and recommendations and assured it that they would be conveyed to her Government.

243. In concluding the consideration of the initial report of Argentina, the Chairman also thanked the representative of the State party for her co-operation and expressed the hope that the issues raised by the Committee, particularly in respect of such important matters as torture, which had been a great evil in Argentina, and religious freedom and religious equality, would be acted upon immediately and would be addressed in Argentina's second periodic report.

Saint Vincent and the Grenadines

244. The Committee considered the initial report of Saint Vincent and the Grenadines (CCPR/C/26/Add.4) at its 953rd and 954th meetings, held on 20 March 1990 (CCPR/C/SR.953-SR.954).

245. The report was introduced by the representative of the State party, who said that his country, despite its small size and population, was resolutely determined to respect the rule of law and to protect the fundamental rights of its citizens. The Constitution which had been elaborated in 1979 when the country obtained full independence from the United Kingdom, substantially protected all the civil and political rights covered in the Covenant, and appropriate legal machinery had been established to enforce those rights. He also noted that the Constitution provided for appeals in all cases to be made to the Judicial Committee of the British Privy Council and that there were no restrictions on access to legal remedies and redress.

246. Members of the Committee thanked the representative for the supplementary information provided in his introductory remarks. They noted, however, that the report had not been prepared in accordance with the Committee's guidelines and, in particular, lacked sufficient information on administrative measures and practices and on the interpretation actually given by the courts to the provisions of the Constitution.

247. With reference to article 2 of the Covenant, members of the Committee wished to know what the precise status of the Covenant was in the judicial system and domestic legislation of the country; whether the Covenant could be invoked before or directly enforced by the courts; whether there had been any judicial decisions regarding the implementation of the Covenant or any references to its provisions by a court; what guarantees existed to prevent derogation from the norms of the Covenant by legislation; how citizens could claim their rights under the Covenant if the law allowed such derogation; and what criteria were used to determine when application could be made to the High Court as a court of first instance. Additionally, members wished to know how extensively, and at what levels of society, the Covenant had been published and whether the current dialogue between the State party and the Committee was public knowledge. It was also observed that Section 1 of the Constitution did not seem to cover such non-discrimination requirements laid down in article 2, paragraph 1, of the Covenant as language, national or social origin and birth or other status.

248. With regard to article 3 of the Covenant, members wished to know whether women nationals married to foreigners and living abroad could pass their nationality on to their children born abroad in the same way as men could and what was the percentage of women in high schools, universities and the professions. Members noted that the Sections of the Constitution corresponding to article 4 of the Covenant did not indicate which rights admitted of no limitation or derogation and asked how, under the circumstances, the non-derogability of such rights was ensured.

249. With regard to article 6 of the Covenant, members of the Committee expressed special concern over the fact that the age limit for the application of the death penalty was clearly incompatible with the Covenant and requested further details about legislation covering the death penalty and about its implementation. They also wished to know whether the application of the death penalty was limited to the most serious crimes; how many prisoners were currently under sentence of death; whether there were any plans for the abolition of the death penalty; how resort to lethal force, and the use of firearms more generally, were regulated; and how often the police had killed someone in performing an arrest. Clarification was also requested of the provisions of Section 2 of the Constitution, which appeared too broad in listing cases where deprivation of life might occur without criminal offence.

250. In connection with article 7 of the Covenant, members of the Committee wished to know whether there had been any judicial determination as to whether the imposition of corporal punishment was degrading; what the justification was for the introduction of corporal punishment under the Criminal Code; whether there was a minimum age for such punishment; and whether such punishment was applied in the schools. They also asked whether the right not to be subjected to medical and scientific experimentation without consent was guaranteed by law.

251. With regard to article 8 of the Covenant, members of the Committee wished to receive information regarding military conscription and the protection of conscientious objectors.

252. Concerning article 9 of the Covenant, members of the Committee observed that the period of seven days for notification of the reasons for detention seemed excessive and wished to know what the justification was for such a long delay. With regard to provisions relating to the deprivation of liberty of persons of unsound mind, it was asked whether suspicion constituted an adequate basis for such action or whether a court order was also necessary. Members also wished to know whether Section 16(2) of the Constitution included the right to compensation for unlawful arrest or treatment and what the regulations and practice were in respect of the detention and treatment of vagrants. In addition, they requested clarification of Section 3(b) of the Constitution, regarding deprivation of liberty for contempt of court.

253. With reference to article 10 of the Covenant, members of the Committee wished to receive information concerning allegations of overcrowding, poor sanitary conditions, the lack of recreational facilities and the beating of prisoners; on police procedures for investigating complaints from prisoners, and the result of any investigation carried out; and on recidivism and the social rehabilitation of prisoners. They also wished to know whether regular prison inspections were carried out by persons independent of prison authorities; whether training of prison officials included information on the Standard Minimum Rules for the Treatment of Prisoners; whether juveniles were housed separately from adults in prison; and at what age adolescents were considered to be criminally responsible.

254. In connection with article 11 of the Covenant, members wished to know whether debtors could be imprisoned for the non-payment of a debt, which would be incompatible with article 11, and whether anyone had been imprisoned for non-compliance with a court order under Section 3 of the Constitution.

255. With reference to article 12 of the Covenant, members wished to know whether there was complete freedom of movement in the territory and whether the constitutional reference to restriction to designated areas referred only to persons free on bail. Clarification was also requested of Section 12 of the Constitution, dealing with the restrictions on freedom of movement of non-citizens; of cases where exceptions were allowed in respect of foreigners in ensuring the protection of fundamental rights; and of other laws, if any, under which the rights of aliens were protected.

256. Regarding article 14 of the Covenant, members of the Committee wished to receive information concerning the excessive backlog of cases awaiting preliminary inquiries and on the steps that had been taken to improve the situation; on the independence and security of tenure of judges; on constitutional provisions, if any, relating to the right of appeal; and on the circumstances under which a person could be tried in his absence. Members also wished to know whether the Judicial and Legal Commission was concerned with the appointment of all judges or only those at the lower levels and whether there were any legal aid schemes.

257. In connection with article 16 of the Covenant, members of the Committee wished to know how the rights of all persons to recognition before the law was guaranteed in the legal system of the country.

258. Members of the Committee wished to receive information regarding constitutional or legislative provisions safeguarding the rights covered in article 17 of the Covenant, particularly in respect of surveillance and wire-tapping.

259. With reference to article 19 of the Covenant, members requested clarification of the statement in the report that no one could be hindered in the enjoyment of freedom of conscience and expression except with his own consent. They also expressed concern about Section 64 of the Criminal Code, which provided for a term of imprisonment for anyone publishing a false statement and which, in the view of members, was incompatible with article 19 of the Covenant and with the protection of freedom of the press. In addition, members wished to know how the ownership and control of the media was organized; whether a television system existed and, if so, whether it was State-run or privately owned; and whether a licence was required to start a newspaper.

260. With regard to article 22 of the Covenant, members wished to know whether the right to collective bargaining by trade unions was guaranteed; whether civil servants were allowed to join a trade union; whether the right to strike was restricted in any way; and whether there were special provisions governing strikes by persons employed in essential services.

261. With reference to article 23 of the Covenant, members of the Committee wished to know whether there were any restrictions on the right to marry; what was the marriageable age; whether minors of both sexes enjoyed equality and whether equality of spouses in areas such as household management was ensured.

262. In connection with article 25 of the Covenant, information was requested as to the conditions and authority under which Parliament might disqualify a person as a registered voter and as to the right of citizens to appeal against such decisions. Members also wished to know why ministers of religion were precluded from serving in Parliament.

263. With regard to article 26 of the Covenant, members wished to know whether there were any languages, other than English, in common use and whether a person who spoke such a language would be at a disadvantage before the courts.

264. With reference to article 27 of the Covenant, members of the Committee wished to know whether minority groups existed and, if so, whether they were entitled to preserve their culture, practise their religion and use their own language.

265. In his response to questions raised by members of the Committee under article 2 of the Covenant, the representative explained that the Constitution was the supreme law and that any law in conflict with it was considered null and void. The Covenant had not been incorporated into domestic legislation because some of its provisions were in conflict with Section 1 of the Constitution but usually a rule of common law was found to resolve such problems. In recent years, some consideration had been given to the possibility of political unification with Dominica, Saint Lucia and Grenada and if such a union should materialize the new State would have to adopt a new Constitution that could incorporate other human rights provisions. While the public had not been made aware of the current meeting with the Committee, reports on the meeting would be given to the media after the representative's return to Saint Vincent.

266. In his reply to questions raised under article 6 of the Covenant, the representative said that the discrepancy regarding the minimum age for application of the death penalty would be raised with the Cabinet on his return. Capital punishment was limited to high treason, murder and genocide, and was carried out only in the case of brutal murder, there being no distinction in legislation between first and second degree murder. However, in most cases of murder the death sentence was commuted and was applied only when the population was highly inflamed. With the exception of the anti-drug unit, the police were not armed. People were rarely shot to death by the police but when this did occur a coroner's inquest was required. No police official had ever been prosecuted for complicity in a shooting.

267. Responding to questions asked under article 7 of the Covenant, the representative explained that in the past, corporal punishment had taken the form of caning and flogging, but that the latter had been abolished in 1983. Caning of juveniles was still retained under carefully controlled conditions, including medical supervision. The purpose of such punishment was correction, not brutality. Corporal punishment was an institutionalized cultural norm within his country which could not be ignored, and its abolition would meet with general public resistance. It was believed that such punishment was needed in a country lacking an extensive welfare service, as it provided necessary discipline in the home and at school and experience had shown that no negative effects had resulted from it.

268. In response to the question raised under article 8 of the Covenant, the representative said that conscription did not exist in his country since there was no military service. Therefore the question of conscientious objection did not arise.

269. In response to questions raised by members of the Committee under article 9 of the Covenant, the representative stated that while the right to compensation for wrongful arrest or imprisonment had not been established, damages could be obtained where the normal common law provided a remedy.

270. In reply to questions raised under article 10 of the Covenant, the representative said that although prison conditions were far from ideal, this was not due to a lack of consideration or sympathy on the part of those in authority and did not involve wholesale violations of human rights. New prison facilities were planned which would place emphasis on vocational training and rehabilitation. All prisoners, except those with a propensity for violence or who tried to escape, were allowed daily recreation. In cases where a prison guard was suspected of having beaten a prisoner, prison authorities had taken disciplinary measures but such cases did not occur frequently. A prison-visiting committee existed, including ministers of religion and medical doctors appointed by the Governor-General, which visited prisons quite regularly and heard complaints from prisoners. Unfortunately, at present juveniles could not be separated from adult prisoners because of lack of space.

271. Responding to questions raised under article 11 of the Covenant, the representative confirmed that there were provisions in the law for imprisonment for debt and acknowledged that this was in contravention of article 11.

272. With reference to questions raised by members of the Committee under article 12 of the Covenant, the representative explained that there was complete freedom of movement in the country but that an alien required a land-holding licence. The Constitution gave Parliament the power to restrict the movement of non-citizens, but as no laws giving effect to that provision had been enacted it was impossible to say how that provision would be applied in practice.

273. In response to questions raised under article 14 of the Covenant, the representative explained that the backlog of cases in magistrates' courts was essentially due to budgetary restrictions, which made it impossible to recruit additional magistrates and support staff and to provide adequate courtroom facilities. However, the situation had improved somewhat over the past two years as a result of the liberalization of certain procedures. The independence of the judiciary was not stipulated in the Constitution but was provided for in other instruments and a judge's salary could not be reduced during his tenure. Under sections 98 and 99 of the Constitution the right of appeal was limited only in a few procedural matters, such as a decision to try a sex-related case *in camera*. Most other decisions of judges could be appealed against, even to the Privy Council in London. Saint Vincent could not at present afford to provide comprehensive legal aid and could do so only to those charged with capital offences. However, many lawyers agreed to defend the poor without payment. Additionally, a first step in establishing a legal aid system had been taken in a recently enacted law, which gave the Solicitor-General the right to handle certain administrative cases free of charge for those who could not afford lawyers.

274. With regard to questions raised under article 17 of the Covenant, the representative said that the law provided no special protection against surveillance such as telephone tapping but did contain provisions against tampering with the mail.

275. Responding to questions raised by members of the Committee under article 19 of the Covenant, the representative said that certain public officials were required to take an oath of secrecy, which was in effect a voluntary surrender of the right to freedom of expression. Section 64 had been considered necessary to prohibit false statements likely to cause fear or alarm or to disturb the public peace, but

it was not intended to curb freedom of speech and, as worded, could not do so since there were legal safeguards to protect a person making a statement in innocence. The Section of the Criminal Code in question had recently been challenged before the High Court and the Committee would be informed of the High Court's ruling. There was one radio station in the country, operated as a public corporation free of government control, and one privately owned television station, which provided broadcasting time to all political parties during the 1989 elections. There were three privately owned national newspapers and all political parties had journals of their own which were published without government interference of any kind.

276. In response to questions raised under article 22 of the Covenant, the representative said that the right to organize trade unions was ensured to everyone, including civil servants. The right to strike was also ensured, even in essential services. Recognition of trade unions was not compulsory but was obtained usually, after a period of struggle.

277. With reference to questions raised under article 23 of the Covenant, the representative said that all legal disabilities had been removed from children born out of wedlock despite accusations against the Government from certain sections of society that it was thereby undermining the status of marriage. Information concerning the right to pass nationality to children, which was a complicated matter, would need to be supplied to the Committee at later date.

278. In response to questions raised under article 25 of the Covenant, the representative stated that the 1989 elections had been free and fair, as had been attested by the many foreign observers who had witnessed them.

279. In reply to questions raised under article 27 of the Covenant, the representative explained that there were no identifiable minority groups as such. Seventy-five per cent of the population were descended from Africans, 15 per cent from Europeans, and the rest from Indians and Carribeans. There was one universal language, English, with no dialects and no major variations; for that reason the framers of the Constitution had not considered it necessary to refer to discrimination on the grounds of language.

General observations

280. Members of the Committee thanked the representative for his full and candid replies to their questions and, in general, expressed satisfaction with the efforts that were being made to observe and protect human rights in Saint Vincent and the Grenadines. They believed that although certain derogations from the Covenant by omission could probably be corrected without the need for constitutional amendments the removal of other inconsistencies, such as those relating to capital punishment for persons below the age of 18 and imprisonment for debt, would clearly require legislative action. In addition to the two problems just cited, members also expressed concern about certain other matters, such as the use of corporal punishment, prison conditions, the independence of the judiciary and possible restrictions on freedom of speech and freedom of the press. Members considered that a constructive dialogue had begun between the Committee and the State party, which, they hoped, would set a fruitful example for all the countries of the Carribean region.

281. The representative of the State party thanked the members of the Committee for their remarks and stated that the dialogue had provided him with a better understanding of the Committee's concerns about the implementation of the Covenant. He assured the Committee that the documents needed to complete his replies to questions raised would be submitted in the near future and that the next periodic report of his country would be more comprehensive. In concluding consideration of the initial report of Saint Vincent and the Grenadines, the Chairman thanked the representative for his frank responses, which had allowed a very fruitful dialogue with the Committee.

Costa Rica

282. The Committee considered the second periodic report of Costa Rica (CCPR/C/37/Add.10) at its 958th to 960th meetings, held on 22 and 23 March 1990 (CCPR/C/SR.958-SR.960).

283. The report was introduced by the representative of the State party, who drew the Committee's attention to certain developments that had occurred since the submission of the report. The rights to which individuals could refer to under the remedy of amparo had been extended to those provided for under international human rights instruments applicable in Costa Rica. A Constitutional Court had also been established as part of the Supreme Court of Justice with competence to deal with cases of unconstitutionality and the remedies of habeas corpus and amparo. As a result of those reforms, international human rights instruments had reached an equal rank with constitutional norms. The representative added that the remedy of amparo could be exercised not only against State authorities but also against private individuals acting in an official capacity or exercising power, against which normal remedies were inadequate for guaranteeing fundamental rights and freedoms. Equality of rights between men and women had also been made an obligation of the State and an Office for the Protection of Human Rights had been established with a view to strengthening real equality and eliminating social discrimination. In February 1990 Costa Rica had held free elections for the twelfth time since 1948. All of those elections had been democratic and uncriticized and had resulted in a peaceful transfer of power from one Government to another.

Constitutional and legal framework within which the Covenant is implemented

284. With regard to that issue, members of the Committee wished to know whether there had been any court decisions where the Covenant had been directly invoked, and whether any persons who had committed indictable offences against human rights established in treaties ratified by Costa Rica had been punished under article 7 of the Penal Code. With specific reference to the recent revision of articles 48 and 10 of the Constitution, members asked how the newly established Constitutional Tribunal proceeded in ruling on the unconstitutionality of a domestic law; and whether it could annul any Costa Rican law that was incompatible with international norms and, if so, whether a case against a particular law could be initiated by individuals. They also wished to receive information concerning the composition, competence and operation of the Supreme Electoral Tribunal; the activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol; the dissemination of information on the Covenant among courts and judges; and the extent to which the public had been made aware of the consideration of the report by the Committee. Further information was also sought concerning factors and difficulties, if any, affecting the implementation of the

Covenant and concerning the impact of the social and political crisis in Central America upon the enjoyment of human rights in Costa Rica, particularly in view of the large number of refugees who had fled there.

285. In his reply to questions raised by members of the Committee, the representative of the State party said that on 22 May 1986, the Supreme Court had ruled that, in case of conflict between a treaty and a law, even if the law was subsequent to the treaty, the treaty always prevailed. Thus, international treaties now enjoyed equal footing with the Constitution except that, in cases of conflict between the Constitution and the Covenant, priority would be given to the Constitution. The norms of the American Convention on Human Rights had been invoked and applied by the Constitutional Court in a number of cases.

286. The Supreme Electoral Tribunal, established under article 99 of the Constitution, had the same rank as the executive, legislative and judicial branches. Its pronouncement was the last word on electoral matters and could not be reversed by the Supreme Court of Justice. In theory, the Supreme Electoral Tribunal could declare an election invalid, but since the preparation and supervision of elections was one of its administrative functions, that had never happened in practice. The Supreme Electoral Tribunal was also the supreme authority on questions of nationality.

287. Referring to activities relating to promotion of greater public awareness of the Covenant, the representative said that courses on constitutional law had been expanded to include study of the Covenant; the Inter-American Institute for Human Rights gave a yearly course on both the Inter-American Convention and United Nations Covenants; all concerned Costa Rican non-governmental organizations had been convened to help in the preparation of the report; and that the public had been made aware through the media of the consideration of the report by the Committee.

288. With regard to factors and difficulties affecting the implementation of the Covenant, the representative said that the Central American human rights crisis had affected Costa Rica because of the large influx of refugees. Official figures showed that from 1978 to 1988 approximately 41,000 refugees had entered Costa Rica. That number, however, included only the refugees who had officially registered with the Office of the United Nations High Commissioner for Refugees. In reality, Costa Rica, with a total population of 2.5 million, was dealing with an influx of from 300,000 to a half million refugees. In view of the difficulties this situation had created, the Costa Rican Government declared after the recent Nicaraguan election that it would refuse to accept any more refugees from that country.

State of emergency

289. With regard to that issue, members of the Committee wished to receive detailed information on legal provisions governing the introduction of a public emergency and about their conformity with article 4, paragraph 2, of the Covenant.

290. In his reply, the representative of the State party said that article 121 of the Constitution empowered the Legislative Assembly to suspend certain rights and guarantees provided for by the Constitution. When the Legislative Assembly was in recess, the Executive branch could also order such a suspension. In the latter

case, the suspension had to be approved within the following 48 hours by the Assembly by a vote of not less than two thirds of the members of the Assembly. The rights contained in article 21 of the Constitution, regarding the inviolability of human rights, and the right contained in article 33, regarding the equality of all persons before the law, could not be suspended.

Non-discrimination and equality of the sexes

291. In connection with that issue, members of the Committee wished to know what the main inequalities were between men and women in respect of political, economic, social and cultural rights; what was the current status of the Bill that sought to remove or reduce those inequalities; and whether the organization established to protect equal rights for the sexes would be empowered to inquire into and grant relief in cases of discrimination brought before it. Members also requested additional information on women's participation in the political, economic, social and cultural life in the country; the proportion of the sexes in schools and universities; and the work and functions of the National Centre for Women and the Family, particularly, in respect of the Centre's review of the Family, Penal and Labour Codes. Additionally, they wished to know in which respects the rights of aliens were restricted as compared with those of citizens; whether there were any restrictions on the right of foreigners to write and express their opinion freely; and whether naturalized parents had equal rights in transferring nationality to their children.

292. In his reply, the representative said that the Real Equality Act, adopted on 8 March 1990, had established a General Office for the Protection of Human Rights for the specific protection of women, children and consumers. Within that General Office, an Office for the Protection of Women's Rights had been set up to ensure the observance of women's rights. The National Centre for Women and the Family had completed its review of the Family, Penal and Labour Codes. Regarding the status and participation of women, he noted that women accounted for about 20 per cent of the economically active population in Costa Rica. The rate of illiteracy for women was lower than it was for men. In 1986, women had held 30 out of 379 government posts and there were six women out of a total of 57 deputies in the current Legislative Assembly. There was little difference between the number of boys and girls attending elementary school, high school or university.

293. With reference to the treatment of aliens, the representative said that aliens enjoyed civil rights but not political rights and therefore did not have the right to vote. The practice of detaining aliens before their expulsion had been contested by the Constitutional Tribunal. At the time of their naturalization, parents could request that citizenship be also extended to their minor children.

Right to life

294. With regard to that issue, members of the Committee wished to know whether there were any plans for early ratification by Costa Rica of the Second Optional Protocol to the Covenant aiming at the abolition of the death penalty; what rules and regulations governed the use of firearms by the police; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; and what measures had been taken by the Government in the field of health care, particularly with a view to reducing infant mortality. Additionally, it was inquired whether there had been any problems arising from confrontation between the police and the large number of

refugees in Costa Rica; whether abortion was permitted; and at what point, under Costa Rican law, human life was thought to begin.

295. In his reply, the representative of the State party said that his country had abolished the death penalty in 1882 and that, although there was no opposition to it, it would take some time before the Second Optional Protocol to the Covenant could be ratified. Regulations governing the use of firearms by the police were the same as those for all citizens in the country, which means that firearms could be used only in cases of self-defence. Between 1982 and 1986 there had been a marked decrease in the number of civilians killed by the police and, in general, the use of firearms by the police did not constitute a problem. The quality of health care was comparable to that in some developed countries and the infant mortality rate was only 17 per thousand inhabitants. Under Costa Rican law, human life began at conception and abortion was permitted only for medical reasons. All birth control methods were generally available. There had been no incidents involving confrontation between the police and refugee groups in Costa Rica.

Liberty and security of the person and treatment of prisoners and other detainees

296. With reference to that issue, members of the Committee wished to know what sanctions and remedies were provided under the law against torture or cruel, inhuman or degrading treatment; how quickly after arrest a person could contact a lawyer and how soon his family was notified of the arrest; what the average period of pre-trial detention was; and what had been the outcome of efforts to amend article 108 of the Penal Code. They also wished to receive information on detention in institutions other than prisons and for reasons unconnected with the commission of a crime and about arrangements for the supervision of prisons and other places of detention, and for receiving and investigating complaints. In the latter regard, they wished to know what the role of the Human Rights Counsel for Prisoners was and asked about the present status of the draft Prison Code. Observing that article 108 of the Penal Code envisaged the possibility of pre-trial detention for more than one year, members wished to know whether there were legal provisions limiting the duration of pre-trial detention and what the criteria were for determining the maximum period of pre-trial detention. Questions were also asked regarding the granting of bail, the circumstances under which a person could be held *incommunicado*; law and practice relating to corporal punishment and to medical or scientific experimentation; the right to compensation in case of unlawful arrest or detention; the application of article 37 of the Constitution, and about paragraph 38 of the report, according to which there was provision for civil imprisonment for failure to comply with alimony obligations.

297. In his reply, the representative of the State party recalled that article 40 of the Political Constitution provided that no one could be subjected to cruel or degrading treatment or to life imprisonment or to the penalty of confiscation, and that any statement obtained by the use of force was null and void.
The Judicial Investigation Board had taken measures to guarantee that any person kept in a detention centre for the duration of an investigation was given a medical examination. As a result of complaints of alleged mistreatment of detainees accused of terrorism, the Board had instituted a general system of medical care to safeguard the health of prisoners.

298. Under article 37 of the Constitution, no one could be detained without substantiated evidence of having committed an offence or without a written order from the judge or authority charged with the maintenance of public order. In all

cases, he had to be placed at the disposition of a competent court within a peremptory period of 24 hours. Any detention in excess of 24 hours gave rise to an appeal of habeas corpus, which referred not only to the requirement that a detained person should be presented to a judicial authority but also involved an examination of the legality of the arrest order itself. No distinction was made in the foregoing regard between nationals and aliens. Detainees could contact their lawyer immediately after arrest and were usually given immediate access to a telephone to contact their families. A person could be held incommunicado for a maximum of 10 days, if so ordered by the judicial authorities and if required to complete the investigation. There had been no cases of detention in psychiatric institutions in Costa Rica but there was a section for prisoners with psychiatric problems in the main penitentiary. The number of prisoners exceeded the capacity of the prison system by 23 per cent. The Human Rights Counsel for Prisoners ensured that the rights of prisoners were not violated.

299. Referring to questions regarding extended periods of pre-trial detention, the representative explained that Costa Rican law provided for a bail system. Judges could deny bail, however, particularly if the release of the detained person could jeopardize an investigation. Indictment and the preparation of cases were regulated under the Code of Criminal Procedure and one month was usually the maximum period allowed for declaring grounds for proceeding to prosecution.

300. Article 10 of the Penal Code provided for civil reparations in cases of slander or false accusation, and the secondary liability of the State in cases where the accused had been found innocent on appeal or where he had been acquitted after having been in pre-trial detention for more than one year. Criminal charges could be brought by private persons only in a very limited number of cases and the liability mentioned as applying to private persons had to be seen as separate from the rest of the article.

301. The General Law of Health prohibited scientific or medical experimentation of any type without the consent of the person concerned. Imprisonment was still possible for failure to pay alimony or support for an ex-spouse or offspring but, in practice, criminal intent had to be demonstrated in order to bring such an action. All other forms of civil imprisonment had been eliminated under the Constitutional Jurisdiction Act of 1989.

Right to a fair trial

302. With regard to that issue, members of the Committee wished to receive detailed information concerning the current status and prospects of enactment of the Bill proposing the establishment of a higher criminal court of cassation. They also wished to know whether there was any free legal aid and advisory scheme and, if so, how that scheme operated; whether judgements were always made public; whether there were administrative remedies for abuse of power by administrative authorities; and whether habeas corpus hearings could proceed without the presence of the accused. Further information was also sought concerning appeals in case of short-term sentences; the requirements for magistrates set forth in article 159 of the Constitution; legal provisions relating to the punishment of terrorism; and the right to have the free assistance of an interpreter.

303. In his reply, the representative of the State party explained that the Inter-American Commission on Human Rights had considered Costa Rica to be in violation of both the Covenant and the American Convention on Human Rights in that the existing remedy of cassation applied only to sentences which were longer than six months. Accordingly, the Government had proposed the creation of a Chamber of penal review for sentences of less than six months. The proposal was currently being considered by the Legislative Assembly. The Public Defender's Office offered free services for persons without sufficient means anywhere in Costa Rican territory and a public defender could be requested by a detainee at any time after he was deprived of his liberty. Several other entities provided free legal aid and advisory services in matters not related to criminal proceedings. In all criminal proceedings, the judgement had to be read out at the time of sentencing and, in non-criminal cases, the judgement was made available to the parties concerned.

304. Under article 49 of the Constitution, an administrative litigation jurisdiction had been established for the protection of individuals in the exercise of their administrative rights. Tribunals could suspend the execution of administrative acts until they had passed judgement on the facts of the case. Magistrates were obliged to post a bond as a guarantee in case the victim of abuse of functions might be awarded compensation. Cases of terrorism were tried in the criminal courts under the same procedures as applied in other criminal cases. The Code of Criminal Procedure provided for the appointment of an interpreter in cases where the accused did not understand Spanish. *Habeas corpus* could be invoked in writing by anyone, not just the detainee, and was given priority over all other matters before the court.

Freedom of movement and expulsion of aliens

305. With reference to that issue, members of the Committee wished to know what legal provision governed the expulsion of aliens, whether an appeal against an expulsion order had suspensive effect; how well the Government's strategy to deal with the large influx of refugees had been working out in practice; and how effectively the Esquipulas Agreement relating to voluntary repatriation of asylum seekers had been carried out. Clarification was also requested of article 19 of the Constitution, according to which aliens did not have recourse to diplomatic protection except as provided in international agreements.

306. In his reply, the representative of the State party stated that administrative detention of aliens during expulsion proceedings had been declared illegal unless there were criminal grounds to justify it. In addition, any individual subject to an expulsion order had recourse to the remedy of *habeas corpus*. Costa Rica had established a procedure for repatriation of refugees but all repatriations had to be voluntary and were subject to review. Costa Rica was seeking to assimilate those refugees who had chosen to stay in the country. Article 19 of the Constitution was designed to prevent pressure being exerted by powerful nations against smaller ones.

Right to privacy

307. With reference to that issue, members of the Committee wished to receive information concerning the law and practice relating to permissible interference with the right to privacy. Additionally, it was asked whether telephone tapping or bugging by electronic devices were prohibited in all circumstances and whether seized correspondence could be used as evidence in a court procedure.

308. In his reply, the representative of the State party noted that while article 24 of the Constitution affirmed the inviolability of private documents, under certain circumstances the courts could order searches or seizure. The Code of Criminal Procedure provided that a judicial authority could authorize the police to enter a person's home, tap the telephone or interfere with correspondence and in such cases the information obtained could be admitted as evidence. The Penal Code set out penalties for slander, defamation of character, wrongful seizure of correspondence and the publication of confidential information or insulting material.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

309. With regard to that issue, members of the Committee wished to know what procedures existed for legal recognition and authorization of various religious denominations; in which respect the Roman Catholic Church enjoyed privileged treatment as compared with other churches or religious groups; what controls were exercised on the press and mass media under Costa Rican law; whether the law requiring accreditation of journalists was still in force and, if so, what role the National Association of Journalists played in granting accreditation; what the penalty was for engaging in journalism without a license; and whether Decree Law No. 440 had been repealed or amended, particularly in the light of the advisory opinion of the Inter-American Court of Human Rights. Information was also sought regarding the activities of foreign journalists in Costa Rica and the application of article 294 of the Penal Code relating to propaganda against the constitutional order.

310. In his reply, the representative of the State party explained that religious denominations had to be registered with the Ministry of Foreign Affairs and Worship to be recognized, whereupon they were entitled to receive benefits and to build churches and establish schools. The Roman Catholic Church received certain subsidies not granted to other churches. While public schools provided Catholic religious instruction, a pupil could be excused from such instruction if he or she did not wish to receive it. According to article 29 of the Constitution, everyone was permitted to communicate his thoughts and to publish them without prior censorship but they were also responsible for abuses committed in the exercise of that right. Licenses authorizing a person to exercise a particular profession, including journalism, were granted by the relevant professional associations which were free from governmental control. If an application for registration was rejected, the person concerned had recourse to the remedy of *amparo* and to a court for administrative matters. A person engaged in journalism without a license was doing so illegally and was subject to a fine. The only requirement for foreign correspondents was that they submit an application for accreditation to the Costa Rican Association of Journalists. Costa Rican legislation favoured the establishment of foreign news agencies and exempted them from taxes on their activities carried out in Costa Rica. Ownership of television channels was limited under the law to citizens by birth or naturalization.

311. The Inter-American Commission on Human Rights, having received a complaint, had ruled that there had been no contradiction between Decree Law No. 440, relating to the Costa Rican Association of Journalists, and the American Convention on Human Rights. Subsequently, however, the Inter-American Court of Human Rights had issued an advisory opinion stating that there had been a contradiction between those two

texts. Since the binding rule from the Inter-American Commission and the advisory opinion from the Inter-American Court were contradictory, the Government had decided not to seek to amend the organic law.

Freedom of assembly and association

312. With regard to that issue, members of the Committee wished to receive information about the number, membership and organization of trade unions in Costa Rica. In addition, it was asked what restrictions were imposed by law on the right of assembly; what the conditions were for meetings in public places; and whether it was true that the *solidarista* movement of employers was favoured to the detriment of trade unions.

313. In his reply, the representative of the State party said that there were 9,250 trade unions with 175,997 registered members in Costa Rica and that a new Labour Code was being developed to update and improve the collective bargaining system. The decline of the trade union movement was due entirely to internal factors. The Law of Association ensured equal treatment for the trade unions and the *solidarista* movement but workers had expressed a clear preference for the latter because the trade unions lacked internal democracy and failed to satisfy their demands. Political meetings in public places had to be authorized and were allowed starting six months before an election. Authorization had to be requested in the locality concerned, with ultimate authority resting with the Supreme Electoral Tribunal.

Protection of family and children

314. With regard to that issue, members of the Committee wished to receive additional information concerning the activities of the National Children's Board and about legal provisions enacted pursuant to article 71 of the Constitution relating to the protection of children in respect of employment and of women and children at work. In addition, information was sought regarding the equality of spouses during marriage and at its dissolution; the influence of the Church in family matters; and the conditions under which a marriage could be prohibited.

315. In his reply, the representative of the State party explained that the National Children's Board, which existed since 1930, protected abandoned children, sought temporary homes for them, supervised adoption, ensured financial support from parents and was a legal party to all court cases involving children. Under the Family Code, marriage could be prohibited because of an existing marriage, consanguinity or absence of consent and could be dissolved either by death or divorce, including divorce by mutual consent. The Church had no control over divorce proceedings and spouses enjoyed equal treatment. Custody of children under the age of seven was automatically given to the mother, but with older children custody would be awarded to either parent.

Right to participate in the conduct of public affairs; rights of persons belonging to minorities

316. Regarding these issues, members of the Committee wished to know whether members of minority groups had equitable access to public service; how such access was exercised; and what factors and difficulties, if any, had affected the enjoyment by minorities of their rights under the Covenant. Clarification was also sought of the reference in article 91 of the Constitution to the suspension of the

exercise of political rights, as well as of article 93 of the Constitution, relating to political propaganda. It was also asked whether a person could be penalized for not participating in an election; whether seats were, in accordance with article 95 of the Constitution, reserved to the representatives of minorities; and whether any laws had been enacted for the purpose of safeguarding the right of the indigenous population to property.

317. In his reply, the representative of the State party explained that Costa Rica had a rather homogeneous population. Its only minorities were persons of African descent from the Caribbean Islands, who accounted for 2 per cent of the population, and the indigenous minority, accounting for 0.5 per cent of the population. Members of the indigenous populations held the most important posts in the National Commission for Indigenous Affairs. There were, at present, no restrictions preventing the indigenous population from exercising its rights under the Covenant. Article 95 of the Constitution referred not to ethnic groups but to political minorities.

318. Under the Penal Code there were certain offences for which the right to vote and to stand for election could be suspended. While voting was compulsory, failure to do so was no longer punishable under the law. The Supreme Electoral Tribunal was responsible for monitoring all political propaganda. The constitutional provisions concerning the suspension of the exercise of political rights by members of the Catholic clergy reflected the political and cultural attitudes prevalent when the Constitution had been drafted.

General observations

319. Members of the Committee thanked the State party's delegation for having engaged in an excellent and constructive dialogue with the Committee. Members noted with particular satisfaction that Costa Rica, while not economically powerful, had such a strong tradition of respect for human rights. The efforts undertaken to review and extend human rights showed how serious Costa Rica's legislature was in removing inconsistencies with the Covenant and were in conformity with the country's long history of judicial independence and tolerance. Members welcomed, in particular, the establishment of a Constitutional Tribunal that placed the Covenant on a par with the Constitution. Noting that the report had not been prepared in full conformity with the Committee's guidelines regarding the form and contents of reports from States parties under article 40 of the Covenant (CCPR/C/20), members expressed the hope that Costa Rica's third periodic report would give more information on the evolving practice in the country. It was also noted that some of the concerns expressed by members of the Committee had not been fully allayed, particularly in respect of certain problems relating to the implementation of article 14, paragraph 5, of the Covenant; the length of pre-trial detention; equality of the sexes; the treatment of jounalists without a license; and the protection of minorities.

320. In concluding consideration of the second periodic report of Costa Rica, the Chairman said that the Committee had greatly valued the efforts of the Costa Rican delegation, which had made possible a very fruitful dialogue.

Federal Republic of Germany

321. The Committee considered the third periodic report of the Federal Republic of Germany (CCPR/C/52/Add.3) at its 963rd to 965th meetings, held on 27 and 28 March 1990 (CCPR/C/SR.963-SR.965).

322. The report was introduced by the representative of the State party, who said that in the Federal Republic human rights were protected within the framework afforded by the free and democratic basic order established by the Basic Law and further developed by the judgements of the Federal Constitutional Court. Human rights were enshrined in the Constitution and, as directly-applicable law, were binding upon the legislature, the executive, and the courts. His Government had devoted long years of effort to promoting the abolition of the death penalty and had been the proponent of the Second Optional Protocol to the International Covenant on Civil and Political Rights, which was adopted by the General Assembly at its forty-fourth session. Recent developments in the German Democratic Republic and other parts of Central and Eastern Europe showed that these efforts to champion human rights and their implementation were fully justified. The Committee, and all other such bodies, deserved recognition and thanks for their role in fostering these developments.

Constitutional and legal framework within which the Covenant is implemented

323. With reference to that issue, members of the Committee wished to know whether there had been any cases during the period under review where the provisions of the Covenant had been directly invoked before the courts or referred to in court decisions; what the status of the Covenant was in domestic legislation and within the hierarchy of the law; how legislative uniformity was ensured when local laws conflicted with Federal legislation; whether international law took precedence over domestic law; why the Government had decided not to ratify the Optional Protocol; whether the rights guaranteed under the Basic Law differed from those contained in the Covenant and, if so, how such rights were protected; how article 19(4) of the Basic Law, concerning recourse to the courts for violations by public authorities, was applied in practice; and what means other than article 95 of the Basic Law were available for preserving uniformity of jurisdiction. Members also requested further information on articles 18 and 19 of the Basic Law, concerning forfeiture and restriction of basic rights, respectively, and on article 20(4), dealing with the right to resist anyone seeking to abolish the constitutional order.

324. In addition, members wished to know whether the Constitutional Court reviewed domestic legislation to ensure its conformity with international human rights obligations; whether the Government planned special measures, following the reunification of the two German Republics, to ensure the protection of human rights under international law; what would happen if the majority of the people decided to change the constitutional system; and what method was available for ensuring compliance with the will of the majority. Members also wished to know to what extent the contents of the third periodic report, and the current meeting, had been publicized in the Federal Republic.

325. In connection with the prospective reunification of the two German Republics, members wished to know whether unification would be effected under the existing Basic Law or through a referendum; whether a further range of choices would be offered citizens on reunification and political choice beyond those reflected in

the outcome of the recent elections; how the Government envisaged the application of the Covenant in the course of reunification; and whether the protection of human rights, particularly in respect of minority groups, would be affected by the process of unification.

326. In his response to the questions raised by members of the Committee, the representative of the State party said that although court judgements rarely referred to the Covenant since the Basic Law already contained the same provisions, there had been 13 cases since 1981, involving the constitutional, administrative and finance courts and concerning primarily the rights of aliens and political asylum-seekers, where the Covenant had been invoked. International instruments, such as the Covenant, once ratified, were integrated into domestic law and were binding. Although treaty law was not on a par with Constitutional law it was enforced through the constitutional jurisdiction, and international legal obligations had to be taken into consideration in interpreting domestic law. The question of the ratification of the Optional Protocol was still under consideration, and developments in East-West relations might have an impact on the issue.

327. In response to questions relating to the Basic Law, the representative said that article 19(4) related to the protection of the authorities and the security of the armed forces and intelligence services in cases of threat and danger to the country, and the measures envisaged therein were applied only in exceptional cases. Concerned persons could appeal to a court to determine the legality of any measures that may have been applied to them. Article 18 of the Basic Law was rarely applied, if at all. Article 19 (2) of the Basic Law provided that the essential content of a basic right could not be encroached upon under any circumstances, but determining what constituted such encroachment was a matter for interpretation. Article 20(4), on the right to resist attempts to abolish the constitutional order, had to be understood against the national socialist historical background of Germany, when strict adherence to the law had at times led to violations of human rights and fundamental freedoms. The right to resist was to be exercised "should no other remedy be possible" and could not be interpreted as allowing anyone to overturn that which had been freely achieved by a majority decision.

328. Concerning the unified jurisprudence of federal and state courts, the representative said that obligations assumed in international treaties had to be observed but that a certain latitude in their application was permitted. In cases of differing interpretations, recourse could be had to higher courts, with the Constitutional Court having the power to declare a state court ruling inapplicable. That court also had responsibility for determining whether there was incompatibility between a Federal law and a state law. The Government had issued a brochure and published special advertisements enabling the public to have free access to the information contained in the third periodic report.

329. In his response to questions raised concerning reunification, the representative of the State party said that any reply he could give as to what might happen could be overtaken by events, since developments were taking place at such a fast pace. There appeared to be two possibilities as to how unification could be effected. One was that the Basic Law, which provided for the possibility of other parts of Germany wishing to join the Federal Republic, might apply. If the Basic Law was not to be automatically extended to a reunified Germany, the question would have to be resolved through negotiation. There would be no

difficulty in respect of the observance of the Covenant and other treaties that had been ratified by both States, but it remained to be seen how the issue of treaty observance would be dealt with in other cases.

Non-discrimination and equality of the sexes

330. In connection with that issue, members of the Committee wished to know in which respects the rights of aliens were restricted as compared with those of citizens and as between foreign nationals from the member States of the European Community and other States; what recourse was available to persons who had been denied passports or travel documents; whether discrimination against individuals, particularly aliens, by private enterprises was permissible under the law; what the criteria were for determining that restrictions on the freedom of movement of aliens to avoid "ghettoization" were justified; whether the freedom of movement of European Community residents could be restricted and, if so, under what conditions; and whether any restrictions had been placed on the freedom of movement of gypsies. In addition, members requested clarification of the apparent discrepancy between the provisions of the Covenant and article 3 of the Basic Law, which failed to mention certain rights covered under the Covenant.

331. In his response, the representative of the State party said that, in general, all the human rights provisions of the Basic Law were applicable to aliens, with the exception of the right to vote in state or federal elections, but that the treatment of aliens varied somewhat among the different states of the Federal Republic. Aliens who were permanent residents of the country had the same rights as citizens but in certain cases their freedom of movement could be restricted and they could be denied residence permits for certain areas. Applicants for asylum were required to remain within the jurisdiction of the authorities to which they had been assigned and could also be directed to live in specific places. While comparisons between the treatment of citizens and aliens were difficult because of the differences in the rules applicable to the two categories, any question of discrimination could be brought before the courts. Citizens and aliens both had the right to appeal to administrative courts on various levels in cases where passports or travel documents had been denied. Restrictions on the right of aliens to freedom of residence related to the fact that efforts were needed to keep the proportion of aliens, which in some industrial areas amounted to 50 per cent of the population, at a level that would not endanger public order. Restrictions on the freedom of movement of citizens of the European Community could only be applied for reasons of health - mere economic reasons were specifically excluded. Gypsies were treated in the same way as all other aliens but the fact that they were nomadic had created problems relating to residence authorizations and the availability of suitable campsites in some States. It was not generally possible to invoke the rights guaranteed by the Basic Law in the event of discrimination by private individuals but in some cases, such as those involving discrimination against women, appropriate legislation did exist. Corrective action against other forms of discrimination was also possible through the legal system. The listing of rights in the first three articles of the Basic Law was not exhaustive. Thus, there was no discrepancy between the Basic Law and the Covenant.

Treatment of prisoners and other detainees

332. With reference to that issue, members wished to know what legal or administrative procedures guaranteed prompt and impartial investigations of alleged violations of article 7 of the Covenant; whether any such allegations had been made

during the period under review and, if so, whether they had been investigated and with what results; whether the continuing need to apply security measures in prisons was kept under review in individual cases; whether any prisoners held in specially-secure blocks had been transferred to open prisons; whether any prisoners, other than those referred to in paragraph 64 of the report, had been released on grounds of "human dignity"; and why the maximum period of preventive detention had been recently extended.

333. Members also wished to know whether action had been taken to reduce the excessively lengthy period of remand in custody of more than one year and whether detention for 48 hours without being brought before a judge was not unreasonably long; what was the average length of juvenile detention and whether juveniles in custody were housed separately from adults; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were applied to detainees under heavy security; and whether the use of pacification cells for deranged prisoners and strip searches of prisoners under tight security still continued. Concerning measures relating to persons who were suffering from AIDS, members wished to know whether such persons could be detained and, if so, where and for how long and on whose authority; whether they could have recourse to the courts; whether they could be treated without giving their consent; and whether testing for AIDS was obligatory. Information was also requested concerning detention in psychiatric institutions and for reasons other than crimes. It was also asked whether conscientious objectors were treated as deserters.

334. In response to questions relating to article 7 of the Covenant, the representative noted that the European Convention against Torture would become effective in the Federal Republic in June 1990. Thereupon, the Federal Prosecutor would be able to conduct impartial investigations into allegations of torture. Additionally, the Commission established under that Convention would be able to inspect the conditions of all prisoners being held under section 129 of the Criminal Code, which regulated the treatment and conditions of those accused of terrorism. There had been no reported cases of torture as such during the reporting period but there had been one case, in 1988, of a forced confession, as well as 155 cases of alleged corporal violations by officials. Sixty-four of these cases had been dismissed and 54 of the accused had been acquitted. Thirty-seven officials had been found guilty and punished. The use of pacification cells was provisional and designed to protect both prisoners and prison furniture. Individual body searches were carried out on prisoners in order to prevent the passing of objects from visitors to prisoners.

335. There was no time-limit for detention on remand. While 48 hours of detention without a judicial decision could be considered harsh, it would be very difficult in practice to reduce that period. The recent extension of the period of preventive detention applied only to Bavaria where, owing to the abuse of certain police powers, the law had been changed to make the length of such detention - a maximum of one week - subject to judicial decision. That provision was being challenged and would soon be tested in the Federal Constitutional Court. There was no general practice of detaining persons who had AIDS or of subjecting them to compulsory treatment, but if a prisoner deliberately infected another prisoner, that would be a criminal offence and treated as such. Preventive detention for juveniles averaged 2.7 months but under pending legislation that period would be reduced.

336. Regarding anti-terrorist legislation, regulated under section 129 of the Criminal Code, the representative said that a prisoner convicted of terrorism could not be permanently cut off from his rights and had the right to take his case to court and to human rights bodies. Such prisoners considered themselves prisoners of war and entitled to a special kind of detention to underscore their status. They chose not to mingle at specified times with other prisoners and had also engaged in hunger strikes in order to be housed together. This the authorities were reluctant to allow, but they had provided a room where such prisoners could spend time together. In recent years the authorities had endeavoured to improve their conditions and treatment. They were allowed contact with lawyers, could conduct correspondence subject to censorship, and were allowed books and electronic equipment in their cells. A number of such prisoners had disavowed terrorism and had been transferred to minimum-security prisons. The sentencing and treatment of prisoners posing special security problems were regulated under Sections 6 and 7 of the Criminal Code. Prisoners were never completely isolated, but were allowed to have a radio and see a defence lawyer and other visitors. The authorities were taking measures to protect the health of prisoners sentenced to solitary confinement. In all 11 *Länder*, cases of psychiatric hospitalization ordered by the police were subject to state laws, which were very specific about the rights of the patients involved. The commission established under the European Convention for the Prevention of Torture would be able also to inspect psychiatric hospitals.

337. Responding to other questions, the representative said that one person serving a life sentence for crimes committed during the Nazi era had been released because of old age. The Federal Constitutional Court was responsible for determining whether old age could be grounds for release of a prisoner. As of March 1988, only 21 persons older than 70 were serving life sentences in prisons in the Federal Republic. Prisoners had special health services and hospitals and they could also consult their private doctors. Conscientious objectors were not treated as deserters or exposed to harsh conditions and could only be punished if they failed to convince the authorities of the sincerity of their convictions.

Right to a fair trial

338. With regard to that issue, members wished to know whether the Law of 19 December 1986 on Combatting Terrorism had had any noticeable impact on terrorism in the country and whether further progress had been made in reducing the duration of criminal proceedings.

339. In his response, the representative of the State party said that a recent report to Parliament had stated that the number of criminal acts committed by extreme left-wing groups was currently the lowest since 1980 and that there had been a decrease in personal injury and property damage and a drastic reduction in attacks on power lines. A new law had been enacted to reduce the duration of criminal proceedings but statistics on the length of proceedings under that law were still not available.

Freedom of movement and expulsion of aliens

340. With reference to that issue, members wished to know how many expulsion orders relating to aliens had been issued; how frequently the immediate execution of such orders was decreed by administrative authorities; and how the right of aliens to apply to a court to set aside such orders, or their immediate execution, was ensured in practice. They also wished to know what plans the Government had for

the eventual repatriation, transfer or settlement of asylum-seekers, especially in light of the impending reunification; how aliens could become naturalized citizens; whether aliens could be denied permission to leave the country in cases where the question of public order had not arisen; whether citizens were issued permanent passports; whether they could obtain duplicate passports from frontier officials in case of need; and what the grounds were for the removal or denial of passports or the prevention of departure from the country.

341. Responding to the foregoing questions, the representative of the State party explained that some 21,000 deportation orders had been issued during the previous three years, but this did not mean that all the individuals involved had been expelled. Deportation orders obliged aliens to leave the country if they had committed a crime, and expulsion ensued only if the deportation orders were ignored. The expulsion of asylum seekers was rare. In 1988, for example, only 200 asylum-seekers out of a total of 95,000 had actually been expelled. The rights of aliens against a deportation or expulsion order were protected by the administrative courts. Immigrants from the German Democratic Republic could enter the country and remain there but the Government hoped that many of them would return home when conditions there improved. Since the country was already densely populated, the Government sought to stop any further influx of Germans from other countries of Eastern Europe and was seeking to encourage the voluntary return of those already in the Federal Republic. An alien could become a citizen after eight years, but not all aliens wished to do so.

342. There was no discrimination as between citizens and aliens in respect of their right to leave the country. Such travel restrictions were applied in cases where the Government had a claim against an alien or citizen for infringement of the law. An identity card was sufficient for travel to most countries but passports were issued to citizens on request when needed. Passports could be withdrawn or denied only under specific circumstances, such as the need to prevent avoidance of taxes and threats to public order or violations of foreign-trade laws. Border authorities usually provided replacement documents when necessary without any difficulties, except when an individual was trying to escape arrest.

Right to privacy

343. In connection with that issue, members wished to know whether, in adopting the census law, the Government had given due consideration to the need to avoid not merely unauthorized disclosure of information obtained from individuals but also excessive intrusion into their privacy; and whether changes that had occurred in the law on the protection of correspondence provided adequate guarantees against arbitrary interference with privacy.

344. In his response, the representative of the State party said that, in respect of the recent census, the Federal Constitutional Court had ruled that while a citizen was obliged to provide information, such data had to be kept confidential and could not be made available to any other authorities. The special procedures envisaged under article 10(2) of the Basic Law that could be resorted to in case of danger to the free democratic basic order did present some difficulties, but there were many safeguards and legal controls, and the administrative courts had the power to decide whether interference with private communications had been justified.

Freedom of expression: prohibition of propaganda for war and incitement to national, racial or religious hatred

345. Concerning those issues, members wished to know whether there had been any prosecutions under paragraph 3 of section 129(a) and paragraph 1 of section 90(a) of the Criminal Code; whether peaceful demonstrations could be prohibited under the Criminal Code; whether denial of permission to hold such demonstrations could be appealed against or challenged in the courts; and what the legal consequences were for holding such demonstrations without a permit. Members also wished to know how the provision relating to the prohibition of written materials insulting to a domestically-established church or other religious community was interpreted; whether there were still groups in the country advocating racial hatred and, if so, what action had been taken against them; whether there was a tendency to broaden the scope of the concept of "protected truths", particularly in view of claims that the Holocaust had not happened; and whether any attempt had been made in the courts to prevent the publication of books, such as The Satanic Verses, which were considered offensive by Muslims.

346. Responding to the questions that had been raised, the representative of the State party noted that paragraph 3 of section 129(a) of the Criminal Code applied to persons spraying graffiti messages on walls to express sympathy with terrorist organizations. He explained that such acts were punishable in all cases as violations of property rights but that a charge based on the content of the message rather than damage to property had to be brought separately. A spray-painted message that was regarded as an expression of a humanitarian position was not deemed to be in violation of the law. No cases under paragraph 1 of section 90(a) of the Criminal Code, alleging insult or disparagement of the Federal Republic or one of the Länder, had been brought to court in the last 10 to 15 years. There had been a few prosecutions for publishing or distributing in writing insults against the flag or the coat of arms of the Federal Republic but the courts had been lenient. Some sentences in such cases had been recently suspended by the Federal Constitutional Court on grounds of unconstitutionality. Sit-down demonstrations were punishable if they deliberately prevented others from exercising their right to freedom of movement. The usual penalties in such cases were fines. Peaceful demonstrations in the open air did not require a permit but had to be notified to the authorities in advance. Decisions by the latter to prohibit or restrict them in the interest of public order were subject to review within a fixed time-limit. In cases involving a diversity of legitimate interests, the authorities gave priority to freedom of assembly.

347. Only a very serious insult to a religious group or church would be prosecuted. While some right-wing extremist groups still existed in the country, their numbers were diminishing. During the reporting period, 340 cases dealing with rightists had come before the courts and judgements had been handed down in 183 cases. Claims denying war crimes, or the Holocaust, were punishable under the criminal law and under a recent change the State could now also press charges, in addition to affected individuals.

Right to participate in the conduct of public affairs

348. With reference to that issue, members wished to know how frequently employment had been denied to applicants who failed to guarantee loyalty to the Constitution and what proportion of the total number of applicants that group had comprised; what recourse was available against decisions to deny civil service employment for

failure to guarantee loyalty; how the ban on civil service employment of Communist Party members would be viewed in the light of reunification, particularly in view of the fact that many civil servants were currently members of the Communist Party in the German Democratic Republic; and whether the ban against party members would be made retroactive. Members also requested clarification of the term "extremist" as used in paragraphs 37 and 38 of the report and requested information concerning the funding of political parties.

349. In his reply, the representative of the State party said that no precise statistics were available concerning the number of persons refused civil service employment on grounds of disloyalty to the democratic order of the State. However, he indicated that, for example, only two applicants out of some 30,000, and 25 out of some 32,000, had been refused on that ground in Baden-Wurtenberg and Lower Saxony, respectively. No one had been denied employment for that reason in the State railroad and postal system since 1986. Public servants were expected to have a positive view of the State and the Constitution, and to demonstrate that attitude in the fulfilment of their duties. The Government's view in that respect had not changed since the initial report to the Committee and it did not feel obliged to employ an individual who did not support the order of the State. However, that principle was not always applied in practice, and the easing of East-West tensions would have a further salutary effect on the hiring of persons for the public service. Decisions to reject an applicant on loyalty grounds had on occasions been overturned by the Federal Constitutional Court or the European Court of Human Rights.

350. All of the implications of that reunification had not yet been thoroughly considered but it could be assumed that, having demonstrated its desire to have a State based on democratic rights, the German Democratic Republic would surely continue to promote democratic development and human rights. Some changes in the funding procedures for political parties had been introduced recently. Parties could obtain such funding from the federal States, membership fees and fund-raising activities but were obliged to disclose where their funds had come from.

General observations

351. Members of the Committee expressed warm appreciation for the high quality of the report, which combined theory and practice as requested in the Committee's guidelines and which, they felt, could be considered as a model for third periodic reports. They also welcomed the frankness and competence with which the representatives of the State party had answered the Committee's questions.

352. While recognizing the existence of a sound mechanism for the protection of human rights in the Federal Republic and the fact that the State party had demonstrated its commitment to promoting and protecting human rights, members voiced some continuing concerns over prolonged periods of pre-trial detention; the duration of some criminal procedures; some aspects of the maximum security detention régime for terrorists; the loyalty requirement for employment in the civil service; and the fact that human rights legislation in some of the Länder was not fully in line with Federal laws. Members of the Committee also urged the State party to ratify the Optional Protocol to the Covenant which, they felt, would provide even greater protection for human rights and would serve as a stimulant to other States to do likewise.

353. The representative of the State party said that the dialogue with the Committee had been very profitable and that the views and concerns expressed by the members would be conveyed to the proper authorities in his country.

354. In concluding the consideration of the third periodic report of the Federal Republic of Germany, the Chairman said that the dialogue between the representative of the State party and the Committee had been extremely useful and urged that the Covenant be regarded by the State party as a valuable human rights instrument in its own right.

Dominican Republic

355. The Committee considered the second periodic report of the Dominican Republic (CCPR/C/32/Add.16) at its 967th to 970th meetings, on 29 and 30 March 1990 (CCPR/C/SR.967-SR.970).

356. The report was introduced by the representative of the State party, who said that international treaties and conventions, including the Covenant and its Optional Protocol, were incorporated in domestic legislation. Accordingly, any gaps that might exist in legislation with respect to recognition of human rights were covered.

Constitutional and legal framework within which the Covenant is implemented

357. With reference to that issue, members of the Committee wished to know what the status of the Covenant was relative to the Constitution and to domestic law and whether the courts had authority to adjudicate any possible conflicts; whether the Covenant had ever been directly invoked before the courts and, if so, with what results; what factors and difficulties affecting the implementation of the Covenant, if any, had been encountered; whether article 10 of the Constitution had ever been used to justify imposing duties that may have the effect of derogating from certain rights; what activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol had been undertaken; whether human rights were taught as part of the regular curriculum; and whether the national human rights committee in the Dominican Republic was still active. Information was also requested regarding the activities of other non-governmental organizations concerned with human rights and regarding the outcome of a case submitted under the Optional Protocol in respect of which the Committee had conveyed its views but had not received a response from the Government of the Dominican Republic.

358. In reply to the questions raised by members of the Committee, the representative of the State party said that the Covenant, upon its ratification, had automatically become part of domestic law. No conflicts had arisen between domestic legislation and the Covenant, which could be invoked before the courts by any person. This had already happened in a few cases. The Constitution was supreme in the hierarchy of law and any other law, including international law, ranked below it. Since the Covenant formed part of domestic legislation there was widespread awareness in the Dominican Republic, among both the public and the authorities, of the need to respect human rights. The observance of such rights was monitored not only by the national human rights committee but also by the press and the media. Dominicans were fully aware of their human rights and of the importance of the Covenant, and information regarding the latter was disseminated

periodically by non-governmental organizations for the benefit of the entire population. The authorities had not communicated with the Committee after it had issued its views on the individual complaint that had been submitted under the Optional Protocol because they had understood that the person involved had been planning to inform the Committee directly of the fact that a satisfactory settlement had been reached.

State of emergency

359. With regard to that issue, members of the Committee wished to know what safeguards and remedies were available to the individual during a state of emergency, particularly in case of the suspension of *habeas corpus*; what rights, if any, could be derogated from during a state of emergency; and whether any such state of emergency had been invoked following the disturbances in 1984.

360. In reply, the representative of the State party said that all individual rights were safeguarded during a state of emergency and only rights pertaining to transit, correspondence and labour could be restricted. The writ of *habeas corpus* could be invoked at all times. No situation necessitating the declaration of a state of emergency had occurred in the country since 1965. No rights had been suspended during the 1984 disturbances.

Non-discrimination and equality of the sexes

361. With reference to that issue, members of the Committee wished to know which legal provisions, other than article 100 of the Constitution, provided guarantees conforming to the provisions of articles 2(1) and 26 of the Covenant; to what extent remaining inequalities between the sexes were addressed by the draft bill pending before the legislature and what its current status was; whether married women enjoyed full civil capacity; in what respect the rights of aliens were restricted as compared with those of citizens; whether there were any statutory provisions guaranteeing protection against discrimination to aliens; and what the proportion of the sexes was in schools and universities.

362. In reply to the questions raised by members of the Committee, the representative of the State party said that under Dominican legislation there was no discrimination of any kind and everyone was considered equal before the law. The law covered all individuals legally in the country and court cases could be decided in favour of foreigners. All women, including married women, had the same rights and enjoyed full civil capacity. However, the community property régime and *patria potestas*, which were discriminatory, were being changed. Access to higher education was unrestricted and women represented more than 50 per cent of the enrolment in liberal studies in the universities. The Government was interested in increasing the participation of women and was in the process of doing so.

Right to life

363. In connection with that issue, members of the Committee wished to know what rules and regulations governed the use of firearms by the national police and security forces; whether there had been any violations of such rules and regulations and, if so, what measures had been taken to prevent their recurrence - in particular, whether deaths through the illegal use of firearms had been investigated and the policemen involved prosecuted and punished; how many violators had been prosecuted and sentenced; and whether any individuals had died while in

police custody and, if so, what the procedure was for investigating such deaths. Members also asked what the country's infant mortality rate was; how the mortality rate of minority groups compared to that of the rest of the population; and what measures had been taken to improve health care.

364. In reply, the representative of the State party said that under article 8 of the Constitution the inviolability of life was fundamental to the accomplishment of the principal aims of the State and that the possession of firearms was regulated under articles 115 and 116 of the Penal Code. Policemen underwent a four-year training period, were very civic minded and enjoyed the confidence of the population. Excesses by the police were punishable by dismissal or fines or imprisonment but were not frequent since they occurred mostly in the context of clashes between the police and armed criminals. Apparent violations were investigated by a commission appointed for that purpose and, when appropriate, the official involved was prosecuted. Many cases had been brought before the courts and some police officials had been imprisoned for abuse of power. There was no death penalty in the Dominican Republic and deaths in prison were not at all common. Prisoners enjoyed protection against abuse and had access to appropriate recourse procedures. The rate of infant mortality in the Dominican Republic was high and was a matter of concern to the Government. A public information and vaccination campaign was under way to protect the lives of young children and to reduce infant mortality. The vaccination campaign had already eliminated many childhood diseases.

Treatment of prisoners and other detainees

365. With reference to that issue, members of the Committee wished to know what controls had been instituted to ensure that persons arrested or detained were not subjected to torture or to cruel, inhuman or degrading treatment; what arrangements existed for the supervision of places of detention and what the procedures were for receiving and investigating complaints; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and relevant regulations and directives made known to prisoners; what the distinction was between untried prisoners and prisoners under preventive detention; whether there were any legal provisions requiring the segregation of juvenile prisoners from adults; whether certain cells in which inhuman conditions had existed were still in use; whether there had been any actual cases of cruel, inhuman or degrading treatment of detainees, including Haitian workers in particular, and what measures had been taken by the Government to prevent or to punish such treatment; and what measures had been or could be taken to alleviate the grave overcrowding in prisons, particularly in respect of the large number of persons in preventive detention. Members also wished to receive clarification of the distinctions among penitentiaries, prisons, establishments for prisoners sentenced to hard labour and "special institutions", and information concerning detention in institutions other than prisons and for reasons other than crimes.

366. In reply, the representative of the State party said that the treatment of prisoners and detainees was regulated under Act No. 284, article 5 of which prohibited torture or inhuman treatment. Prisoners under preventive detention were those who had been charged on the basis of evidence but not yet tried or sentenced. Normally, persons in that situation would be released on bail but certain offenders, particularly persons charged with drug-related crimes, were kept in detention. Unfortunately, the number of such persons was large, but efforts

were being made to reduce their number as well as to relieve overcrowding in prisons through the construction of more detention facilities. This would make it possible to keep different categories of prisoners separated and to comply more fully with the United Nations Standard Minimum Rules.

367. There were special courts and special prisons for minors under age 18 but some minors could also be found in regular prisons. A Penitentiary Commission set up by the Roman Catholic Archdiocese was working in the prisons in addition to a number of private organizations. Lawyers' associations were also striving to improve the workings of the prison system and to help in the rehabilitation of prisoners. The so-called "Viet Nam cells" had all been dismantled and were now fortunately a thing of the past. There was a very large number of illegal Haitian workers in the country who were often subject to arbitrary treatment by Government officials and by plantation owners. This was a matter of serious concern to the Government.

Liberty and security of the person

368. With regard to that issue, members of the Committee wished to know how soon after arrest the concerned individual's family was notified and a lawyer contacted; what the maximum period of pre-trial detention was; and whether the penalty of "demotion" provided for in article 114 of the Penal Code for "ordering or committing arbitrary acts prejudicial to individual liberty or the political rights of individuals" was a sufficient punishment for such offences. Clarification was also requested of the stipulation in that article that a junior officer who committed an illegal act on the order of a superior officer would not be subject to punishment, and of the "summary procedure" established under the Habeas Corpus Act.

369. In reply, the representative of the State party said that the families of detainees were informed immediately and in case of need the State provided free defence counsel. The maximum period of pre-trial detention stipulated by law was five days but that time-limit was not always observed because the courts were overburdened. The penalty of "demotion" was in fact the penalty of *degradación cívica* stipulated in article 114 of the Penal Code, which called for stripping the offending official of his post and official capacity and thus making him subject to trial in the ordinary courts. When a junior officer acted unlawfully under orders from a supervisor it was the superior who was held responsible and subject to punishment. This provision dated from the era of the Napoleonic Code and the Government was gradually reforming the entire Penal Code. The summary procedure under the Habeas Corpus Act provided for the right of an individual to complain to the Public Prosecutor's Office of unjust imprisonment and obliged judges to hear the case even without an initiative from the latter.

Right to a fair trial

370. Concerning that issue, members of the Committee wished to know how the independence and impartiality of the judiciary was guaranteed and whether the selection of judges by the Senate was consistent with the principle of such independence. It was pointed out in that connection that the independence of the judiciary implied that judges should be independent of both the executive and legislative branches of government and that the classic way of ensuring an independent judiciary was by applying such measures as security of tenure, unvarying emoluments and mandatory retirement. Information was also requested concerning regulations governing tenure, dismissal and disciplining of members of

the judiciary and the availability of free legal assistance to criminal defendants. In addition, members asked whether sentences in criminal cases were made public, as provided in article 14, paragraph 1 of the Covenant; whether Haitians who did not speak Spanish were provided with interpreters when they were involved in court proceedings; and whether the draft bill that would give authority over the appointment of judges to the Supreme Court had been enacted.

371. In reply, the representative of the State party said that the procedures for the election or dismissal of judges were set out in Title VI of the Constitution. State prosecutors were appointed by the executive branch. Judges were appointed by the Senate and their terms of office were coterminous with that of the legislators. While a newly elected Senate sometimes extended the tenure of some judges it usually appointed new ones. In making such appointments the Senate did not follow a particular political line and took into account the views and recommendations of the bar association as to the qualifications of candidates for judicial appointment. However, there had been quite a number of cases of judges acting under undue influence from senators and some judges had been disciplined by the Supreme Court for that reason. Efforts were being made to change the current system by entrusting responsibility for the selection of judges to a national council but the amendment of the Constitution in that regard was a very delicate matter. The power to discipline all judges was vested in the Supreme Court and judges of the Supreme Court itself were also subject to the disciplinary authority of that Court. Sentences were public but were not published. Any individual could go to the court and receive a copy of a sentence and journalists could write about any sentence they found interesting. Criminal defendants without means were provided by the State with the services of lawyers and interpreters free of charge.

Freedom of movement and expulsion of aliens

372. With reference to that issue, members of the Committee wished to receive clarification of the penalty of "local expulsion" (*destierro*) and requested information concerning legal provisions governing the expulsion of aliens as well as relevant statistics indicating on an annual basis the number of expulsions and the reasons therefor. They also asked whether an appeal against an expulsion order had suspensive effect; whether laws that could restrict freedom of movement, if any, were compatible with article 12 of the Covenant; what the Government was doing to prevent the forcible retention of Haitian workers who wished to leave the country and, particularly, what instructions had been given to the Dominican security forces who were said to be responsible for that unacceptable practice. In that same connection, further details were requested concerning allegations in an ILO report that Haitians who had crossed illegally into the Dominican Republic were transported to the sugarcane plantations by government vehicles with military escort and that those Haitians who possessed identification documents were often relieved of them by the military.

373. In reply, the representative of the State party explained that although the penalty of local expulsion was provided for under the Dominican Penal Code it was an anachronism and was, in fact, never applied. Procedures for the indictment and conviction of aliens who broke the law were contained in legislation relating to immigration. Conviction for an offence could lead to expulsion but expulsion orders were subject to appeal except in the case of drug traffickers. However, alien drug traffickers, as indeed all aliens, had full rights to a fair and public trial with full guarantees, including the right of *habeas corpus*. The constant flow of Haitians who crossed the borders to work in the cane fields enjoyed all

legal safeguards. They did not work under conditions of servitude or slavery and were entitled to the same freedom of movement as anyone else living in the Dominican Republic. Haitian immigrants were at times transported from the border to their places of work by the Dominican police but the Government had no policy permitting forced labour nor any desire to promote such activity. It was possible that certain abuses vis-à-vis Haitian workers had occurred but they had not been officially sanctioned. Measures to restrict freedom of movement could be taken by the Government in the event of a threat to national security or a natural disaster.

Right to privacy

374. With regard to that issue, members of the Committee wished to know how constitutional guarantees relating to privacy were ensured in law and practice; whether there were any conditions under which the secrecy of telegraphic, telephonic and cable communications could be violated; and how the use of electronic listening devices was regulated. In reply, the representative of the State party explained that the appropriate authorities were authorized to enter a person's home in cases where there was evidence that the occupants were harbouring a criminal or hiding weapons. The use of electronic eavesdropping devices was not regulated since the Dominican Republic did not possess such devices. The secrecy of communications was inviolable under all circumstances.

Freedom of conscience, religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

375. With reference to that issue, members of the Committee wished to know what the grounds were for placing restrictions on freedom of conscience, worship and expression; how the imposition of such restrictions had been dealt with by the courts; how the term "subversive propaganda" was defined; whether the advantages enjoyed by the Catholic Church were also extended to other religious groups and to atheists; and what influence the Catholic Church had on freedom of religion.

376. In reply, the representative of the State party said that the Dominican Republic permitted full freedom of conscience, religion and expression and access by all persons to the media. Restrictions on such freedoms could be authorized only in cases of threats to public order or national security. Subversion was defined in the Penal Code as actions designed to incite people to take up arms against one another. Certain legal restrictions relating to subversion dated back to 1966, when the country had just emerged from civil war. In fact, the authorities had no desire to restrict the expression of opinion and no one had been prosecuted for engaging in subversive propaganda. Candidates for political office criticized the Government freely and there was no censorship. Agnosticism was not prohibited and there were no restrictions on religions other than Catholicism. The Catholic Church enjoyed considerable moral influence but had little weight.

Freedom of assembly and association

377. Concerning that issue, members of the Committee wished to receive information on the number, membership and organization of trade unions; laws and practices relating to the establishment of political parties; the basis for denying agro-industrial, agricultural and other workers the right to form trade unions; the status of the draft bill to protect trade union members from dismissal; and the planned revision of the Labour Code, particularly in relation to the right of civil

servants to strike and the right of agricultural workers to participate in trade union activities. Referring to the establishment in 1988 of a special commission to review the situation of agricultural workers including, in particular, Haitian agricultural workers, members of the Committee wished to know whether that commission had already issued its recommendations and, if so, how the Government intended to implement them.

378. In reply, the representative of the State party said that workers were free to co-operate and to defend their interests. Strikes were permitted under the Constitution and did take place. Currently, certain civil servants, including judges, teachers and doctors, were on strike despite the lack of provision in the Labour Code for strikes by civil servants. That strike was being tolerated by the Government, de facto and the Secretariat of Labour was studying the possibility of extending the right to strike to civil servants. A working group was engaged in the task of elaborating an amendment to include agricultural workers in the Labour Code so as to allow them to participate in trade union activities. The establishment of political parties was subject to approval by the Central Elections Board. To be eligible for registration, a political party had to be able to demonstrate support from five per cent of the electorate.

Protection of the family and children

379. With reference to that issue, members of the Committee wished to receive information regarding laws relating to the equality of spouses and providing for the protection of the property rights of married women, as well as the law and practice relating to the employment of minors. Members also wished to know what the differences were, if any, in the status and rights of children born in and out of wedlock and whether it was true that Dominican nationality had been refused to the children of undocumented Haitians.

380. In reply, the representative of the State party explained that where couples had chosen to live under a community property régime, the property was administered by the husband. However, a change was currently under study that would provide the wife with equal rights in that respect. Under present laws relating to inheritance, illegitimate children who had been recognized by their father inherited one-half of the amount that legitimate children inherited and those not recognized had no rights to inheritance at all. A bill was under consideration which would provide for recognition of the inheritance rights of illegitimate children. The employment of minors under 18 years of age was prohibited by law but, unfortunately, in fact it was common to see minors at work at various jobs except for the major industries, where the law was strictly enforced. It was not the official practice to refuse to register the children of Haitian parents but isolated cases where individual officials had done so could not be excluded.

Right to participate in public affairs

381. In connection with that issue, members of the Committee wished to know how equal access to public service was guaranteed; what means were used to enforce the obligation to vote and what the abstention rate had been at the last elections; why members of the armed forces and the police were deprived of the right to vote; and why convicted criminals lost the right to vote.

382. In reply, the representative of the State party said that the only requirement for participation in the public service was qualification for the job in question. Elective office was open to anyone who could attract the necessary votes. No penalties were imposed on the 30 to 40 per cent of the electorate that had abstained in the latest election. A person serving a criminal sentence only lost the right to vote during his incarceration. Members of the armed forces were denied the right to vote in view of the army's excessive involvement in politics in the past and the need to preserve the army's political neutrality.

Rights of persons belonging to minorities

383. With reference to that issue, members of the Committee wished to receive information regarding the size of any ethnic, religious or linguistic minorities living in the Dominican Republic and concerning any measures taken actively to promote the enjoyment by them of their rights under article 27 of the Covenant.

384. In reply, the representative of the State party said that while Dominicans had many and diverse ethnic, linguistic and religious origins no special legislation promoting minority rights had been necessary since minorities were integrated into society and their rights were protected in the same way as those of the majority of Dominican citizens.

General observations

385. Members of the Committee thanked the representatives of the State party for their efforts to answer the Committee's questions but stressed that much more information was needed concerning the human rights situation in the Dominican Republic. They expressed their disappointment because neither of the two reports that had been submitted to date had complied with the Committee's guidelines, having been too general and lacking the specifics that could serve as a basis for a detailed consideration of the various issues and for the kind of dialogue from which the State party could most usefully benefit. Accordingly, members urged the State party to provide, in its third periodic report, more specific information, including relevant statistics as well as social and political information and explanations of how Dominican laws were actually implemented, so that the Committee could obtain a clear picture of the actual facts relating to the observance of the provisions of the Covenant.

386. Special concern was expressed by members regarding certain aspects of the human rights situation in the Dominican Republic that appeared to be at possible variance with provisions of the Covenant, including the loose wording of many constitutional and legal provisions relating to the restriction of certain individual rights, which seemed to leave too much room for interpretation by the authorities; the situation and treatment of the Haitian workers in the country, which appeared to involve major violations of the Covenant in a number of respects; inadequate guarantees of the independence of the judiciary; insufficient protection of the right of association of workers, particularly agricultural workers, and of their right to protection from anti-union discrimination and undue interference from employers; problems relating to the duration of preventive detention and the conditions of imprisonment; and discrimination in the treatment of children born out of wedlock.

387. In concluding the consideration of the second periodic report of the Dominican Republic, the Chairman expressed the hope that the State party's next report would be in conformity with the prescribed guidelines. He also requested the State party to inform the Committee in writing of the measures taken to settle the complaint that had been submitted under the Optional Protocol and in respect of which the Committee had submitted its views.

Nicaragua

388. The Committee considered the second periodic report of Nicaragua (CCPR/C/42/Add.8) at its 975th to 978th meetings, held on 4 and 5 April 1990 (CCPR/C/SR.975-SR.978).

389. The report was introduced by the representative of the State party, who drew the Committee's attention to a number of developments demonstrating the importance attached by his Government to the promotion of human rights that had occurred following the assumption of power by the Government Junta for National Reconstruction. In this connection, he noted, inter alia, that political pluralism had been strengthened through the presidential and legislative elections held in 1984 and the adoption of the new Constitution in 1987; that under article 46 of the Constitution all persons enjoyed the protection and full exercise of the rights set forth in international human rights instruments, including the Covenant; and that the Maintenance of Order and Public Security Act, as well as the decree which had set up the anti-Somoza people's tribunals, had been repealed, resulting in the release from prison of some 4,000 former members of the National Guard. The principle of political pluralism had also been strengthened by the adoption of the Electoral Act of 24 August 1988.

390. Additionally, the representative noted that the General Act on Social Communication Media had created favourable conditions for the holding of elections in 1990. The elections of February 1990, the outcome of which had been unfavourable to the party currently in power, had taken place in the presence of more than 2,000 observers and had been the cleanest in the history of Nicaragua. The peaceful and orderly transfer of power on 25 April 1990 would be carried out pursuant to the agreements that had recently been signed and would be guaranteed under the legal framework established by the Constitution.

Constitutional and legal framework within which the Covenant is implemented

391. With regard to that issue, members of the Committee wished to know what the legal status of the Covenant was in domestic legislation; whether there had been any instances where the provisions of the Covenant had been directly invoked before the courts and, if so, with what results; what remedies were available if a domestic law ran counter to international obligations; whether there had been any instances where provisions of a law, decree or administrative act had been challenged as unconstitutional on the ground that they impaired the substance of a right provided for under the Covenant; whether the National Commission for the Promotion and Protection of Human Rights had had occasion to investigate or denounce abuses or human rights violations and to take corrective action; and what the impact of the new legislation regulating the remedies of amparo and habeas corpus and the declaration of unconstitutionality had been on earlier legislation such as the Amparo Act of 21 May 1980. Additionally, members wished to know the extent to which public opinion had been taken into account in drafting the new

Constitution; how the Amparo Act applied to the lodging of complaints in the courts; how the independence of the National Commission for the Promotion and Protection of Human Rights from executive control, and the tenure of the Commission's members were guaranteed; and how its powers to implement specific remedies compared with those of other judicial or legislative bodies. Members also sought information concerning the impact of the civil war and outside intervention on the human rights guaranteed under the Covenant; activities relating to the promotion of greater awareness of the provisions of the Covenant and the Optional Protocol; and efforts to disseminate such information among law-enforcement officers and the indigenous communities of the Atlantic Coast region.

392. In connection with the transitional period that was now in course, and with specific reference to the Amnesty Act, members wished to know what offences were covered by the Amnesty Act and for what time period; how public opinion had responded to that Act's adoption; whether both political and non-political crimes, and offences committed either by the contras or the Sandinista People's army, were covered; and how victims of offences constituting a violation of the Covenant would be compensated. Clarification was also requested of the extent of the privilege of immunity and of the circumstances under which it could be granted.

393. Replying to the questions raised by members of the Committee, the representative of the State party explained that the Constitution did not contain any provisions concerning the hierarchical relationship between international human rights instruments and Nicaraguan law. Article 46 of the Constitution, which provided that every individual should enjoy in full the rights set forth in such instruments, had to be read in the light of article 182 of the Constitution, according to which any treaties that were contrary to the provisions of the Constitution had no value. Thus, where the Constitution failed to include a specific right the provisions of an international treaty might be applicable and held superior to domestic law, whereas in case of a discrepancy between such an instrument and the Constitution the latter would prevail. In cases where there was an alleged contradiction between an ordinary law and one or more of the provisions of the Covenant that were recognized by the Constitution, constitutional remedies could be pursued under the Amparo Act. The provisions of the Covenant had been invoked before the courts in several cases such as those of Eugene Hasenfus or Mario Alegriá, and both individuals had later been pardoned. When a law, decree-law, or decree-regulation directly or indirectly violated rights established under the Covenant, it could be challenged before the courts. In one such case of conflict, the law establishing the jurisdictional functions of the police had been amended in order to remove a penal sentencing function from the police.

394. Under the new Amparo Act adopted in 1988, amparo could be invoked by any natural or juridical person against acts of the Administration that violated or attempted to violate the rights and guarantees established in the Constitution. The remedy of habeas corpus could be brought by the aggrieved party or any citizen at any time, even during a state of emergency, where a person was being illegally deprived of his liberty or threatened with the deprivation of liberty. Appeals regarding the unconstitutionality of any law, decree or regulation could be filed by any citizen, but was only resorted to in exceptional cases. A declaration of unconstitutionality made a law inapplicable but did not necessarily repeal it.

395. The primary purpose of the National Commission for the Promotion and Protection of Human Rights was to investigate and denounce any violation of human rights committed against anyone within the national territory. The Commission could, inter alia, correct administrative acts affecting human rights; apply for judicial remedies in the courts; issue writs of habeas corpus in connection with acts affecting an individual's physical integrity; ask for a forensic medical opinion on the health of a prisoner; and recommend pardons and measures such as conditional liberty or parole. It was an independent body composed of 10 impartial experts, who enjoyed an autonomy similar to that of judges of the Supreme Court. The Commission was also active in promoting greater public awareness of the provisions of the Covenant and the Optional Protocol; played a prominent role in carrying out educational programmes devoted to human rights; and ensured that human rights education was included in the curricula of all educational institutions.

396. Replying to questions relating to the 1990 Amnesty Act, the representative explained that the Tela agreements concluded by the Central American Presidents had established procedures for demobilizing members of the Nicaraguan resistance and guaranteeing their peaceful reintegration into civilian life. Under the agreements, members of the Nicaraguan Resistance who laid down their arms would not be prosecuted for past crimes of a political or military nature. In the interest of national peace and reconciliation, the Sandinista Government had also pardoned former members of Somoza's National Guard, prisoners sentenced for crimes against public policy, and members of the Nicaraguan army who had committed crimes in time of war and conflict. Provisions had nevertheless been made for compensation of the families of victims of human rights violations. Presidents and Vice-Presidents of Nicaragua serving for terms of office after the 1984 elections benefited from the privilege of life-time immunity. However, Nicaraguan legislation provided for a procedure whereby immunity could be suspended.

State of emergency

397. With reference to that issue, members wished to know what control was exercised by the legislative branch over the power accorded to the President to proclaim a state of emergency; what the differences were between a state of emergency and a state of war; and whether there was any legal provision to guarantee that there could be no derogation from the basic rights laid down in article 4, paragraph 2, of the Covenant. In the latter connection, members sought clarification of the circumstances which had justified derogations from articles 10, 26 and 27 of the Covenant. They also wished to know whether a new declaration of a state of emergency had been made in 1989 and, if so, whether the provisions of article 4, paragraph 3, of the Covenant had been complied with.

398. In his reply, the representative said that the modalities for imposing and lifting states of emergency were regulated by articles 185 and 186 of the Constitution as well as by the Emergency Act of 19 October 1988. Article 2 of that Act authorized the President, in case of war or when demanded by national security, economic conditions or a national catastrophe, to suspend the rights and guarantees set forth in the Constitution, except for those established in the articles enumerated in article 186 of the Constitution, for a specific and renewable period. The National Assembly had to be informed of any such action but had no legislative control in the matter. The Act was fully in keeping with article 4 of the Covenant and provided for a number of remedies, such as amparo and habeas corpus to protect the rights and guarantees not suspended by emergency decrees. Individuals could also apply for a review of administrative acts by a

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superior official within six days. The state of emergency that had been declared in 1982 had been repeatedly extended and the Government had always given due notification of such actions. In the interest of the overall peace of Central America, the Government had recently decided to lift the state of emergency prevailing in the country even though its cause had not been removed.

Non-discrimination and equality of the sexes

399. In connection with that issue, members of the Committee wished to receive detailed information on the effectiveness of programmes of action designed to promote full equality between men and women, including the education and health programmes and the Child Development Centre programme. They also inquired in which respects, other than in the exercise of political rights, the rights of aliens were restricted as compared with those of citizens, and whether non-nationals permanently resident in Nicaragua were subject to restrictions on their choice of profession and place of work.

400. In his reply, the representative of the State party said that the Government had endeavoured to integrate men and women into productive life on an equal footing. The health professions employed more women than men, women could hold public office, classes were co-educational in 90 per cent of primary and secondary schools, and married women were guaranteed independence in matters of nationality pursuant to Decree No. 867 of November 1981. Child Development Centres did not discriminate in any way on grounds of sex. Article 27 of the Constitution provided that aliens enjoyed the same rights as nationals subject to certain restrictions stipulated in domestic public law, but they could not hold public office.

Right to life

401. With regard to that issue, members of the Committee wished to know what rules and regulations governed the use of firearms by the police and security forces; whether there had been any complaints during the reporting period concerning alleged disappearances caused by the police or the security forces or undertaken with their support and, if so, whether such allegations had been investigated by the authorities and with what results; what measures had been taken by the Government in the field of health care, particularly with a view to reducing infant mortality; and how the infant mortality rate among the ethnic groups compared with that of the total population.

402. In his reply, the representative of the State party confirmed that there had been instances of disappearances, predominantly in war zones. Often, when people had joined the *contras* without the knowledge of their families, they had been reported as missing. Disappearances had also occurred as a result of the fighting between the Sandinista People's Army and the *contras* and at times it had been difficult to determine who had actually disappeared. Extensive immunization campaigns had been organized against polio, smallpox and measles and efforts had also been made to combat malaria. Children were provided with milk in the schools. The same health care services were available, without discrimination, to Nicaragua's ethnic population but it had been difficult to reach those populations at times because they lived in remote areas and were suspicious of modern medicine.

Treatment of prisoners and other detainees

403. With reference to that issue, members of the Committee wished to know whether the legal situation with respect to torture described in the report had been clarified; what the procedures were for receiving and investigating complaints relating to article 7 of the Covenant; whether there had been any such complaints during the reporting period and, if so, whether those allegations had been investigated by the authorities and with what results; what the penalties were for violating the provisions of article 4 of Ministry of Interior Order No. 069-86 of 21 October 1986; whether that order applied to the use of the so-called "chiquitas"; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with; whether prison regulations and directives were known and accessible to prisoners; and whether there were any political prisoners in Nicaragua and, if so, for what reasons they were being detained. Members also wished to receive further information concerning the alleged failure of the Government to identify and establish lists of prisoners of war; the conditions and duration of solitary confinement, the protection afforded to individuals taken prisoner during the internal armed conflict, the definitions applied to political prisoners and political crimes, the implementation of the Amparo Act; and the prisoner rehabilitation régime.

404. In his reply, the representative explained that the national penitentiary system regulating the treatment of prisoners and other detainees was under the control of the Ministry of the Interior. Physical or mental torture was not acceptable under any circumstances and the dignity and integrity of the person were guaranteed under the Constitution. The procedure for investigating alleged violations of rights under article 7 of the Covenant were set out in the Amparo Act of 1980 and court rulings were enforced. The use of the so-called "chiquitas" had been eliminated in 1989 and the International Committee of the Red Cross, which had visited the alleged sites of secret prisons in 1989, had found no such prisons. The International Red Cross had also carried out a survey of the number of prisoners in the national and regional penitentiaries. There were no political prisoners in Nicaragua and, in order to create a climate of peace, individuals who had been detained for crimes endangering State security had been pardoned during the recent electoral process. The determination of when an individual who had been captured during the period of the armed conflict was rehabilitated and ready to be transferred to an easier treatment régime was made by a team of psychologists and sociologists working directly with the prison population. Under the open-goals system, detainees were free to work in public areas and to spend week-ends with their families. Such prisoners rarely tried to escape.

Liberty and security of the person

405. With reference to that issue, members of the Committee wished to know how soon after arrest a person could contact his lawyer; what was the maximum period of pre-trial detention; what provisions governed release pending trial; what was the authority, under the Sandinista Police Jurisdiction Act, of the police; and, in the absence of a specific provision for compensating victims of unlawful arrest or detention or persons wrongfully convicted or imprisoned, how such compensation could be obtained. They also requested information concerning detention in institutions other than prisons and for reasons other than crimes; provisions for the judicial review of decisions to place mentally ill persons in institutions; and legal provisions relating to preventive detention.

406. In his reply, the representative of the State party said that under the Sandinista Police Jurisdiction Act an accused person had to be allowed to contact a lawyer within 72 hours. Unfortunately, there had been a number of abuses where accused persons had not been permitted to contact a lawyer, but such difficulties were being overcome through the remedy of *amparo* and the stepped up training of members of the police in law enforcement and legal procedures. After the maximum of five days following an arrest, the police examining magistrate was obliged, within a further 24-hour period, to evaluate the facts and decide whether to release the accused person immediately or to refer the case to the Government Attorney for further consideration. In the latter case, the Government Attorney had then three days to decide on the merits of the case and whether to institute proceedings. Thus, the maximum period of pre-trial detention was nine days. Release from preventive detention on bail or on personal recognizance was possible under the law.

407. Compensation for unlawful arrest or wrongful imprisonment could be pursued through the courts by procedures established under the Civil Code for human rights violations. Pregnant women, mentally ill persons and persons with chronic illnesses or infectious diseases were placed in institutions other than prisons in accordance with the Code of Criminal Procedure.

Right to a fair trial

408. In connection with that issue, members of the Committee requested information concerning the legal and administrative provisions governing the tenure, dismissal and disciplining of members of the judiciary and how the security of tenure and independence of the judiciary was guaranteed; the jurisdictional differences among the ordinary courts, the Anti-Somoza People's Tribunals and Military Courts; popular participation in the courts; the kind and number of cases that were assigned to the Anti-Somoza's People's Tribunals under Decree No. 1074; the organization and functioning of the Bar in Nicaragua; and the availability of legal assistance to criminal defendants. In addition, members wished to know how military judges were appointed.

409. In his reply, the representative of the State party explained that judges of the Supreme Court were elected from lists submitted by the Executive to the National Assembly. Such lists were drawn up by the President in consultation with members of the legal profession, various political parties and other government bodies. Appeals Court judges were elected by the Supreme Court. The functions of dissolved bodies such as the Sandinista police, the housing court and the agrarian courts had been given to the judicial branch, and this had strengthened the latter's independence. Nicaragua's only experience with popular participation in the courts had been the Anti-Somoza People's Tribunals, established in 1983 and abolished by Decree No. 296 of 20 January 1988. All the cases pending before those tribunals had been transferred to the ordinary courts. Former members of the National Guard and the *contras* who were still in custody had been amnestied by an order of 9 February 1990. Military courts dealt only with military personnel or, in exceptional cases, with civilians involved in crimes of a military nature. Persons who had been judged by a military court could appeal to the Supreme Court. There was no organization or professional group that performed the functions of a Bar. Defendants without means could obtain legal advice from an *ex officio* counsel appointed to assist them.

Freedom of movement and expulsion of aliens

410. With regard to that issue, members of the Committee wished to know what legal provisions governed the expulsion of aliens; whether an appeal against an expulsion order had suspensive effect; and whether the Amnesty Act of 23 February 1985 was still in force. They also wished to receive statistical estimates concerning the number of nationals who had left Nicaragua subsequent to 19 July 1979 and the number that had returned since the enactment of Decree No. 1353 of 4 December 1983 and of Act No. 1 of 23 January 1985.

411. In his reply, the representative of the State party said that under the Migration Act of 4 May 1982 a residence permit could be revoked or denied, without explanation, for offences against public policy or national security or for interfering in the country's internal affairs and in political matters. The Ministry of the Interior could be petitioned to review an expulsion order and, under article 27 of the Constitution, the remedy of amparo could be invoked before the Supreme Court of Justice if an administrative confirmation of expulsion resulted in injury. The Amnesty Act of 23 January 1985 had been extended several times and had been supplemented by the National Reconciliation Act, adopted on 13 March 1990. A total of 211 persons had been granted amnesty between April 1989 and February 1990. The number of Nicaraguans who had left the country after July 1979 or who returned after December 1983 was not known, but more than 5 million people had travelled to and from Nicaragua for various reasons.

Right to privacy

412. In connection with that issue, members of the Committee inquired as to whether there had been any complaints of abuse of authority by unlawful entry and, if so, whether such cases had been investigated and action taken to punish offenders and to prevent a recurrence of the offence.

413. In his reply, the representative said that the home, correspondence and communications of all individuals were inviolable, in principle, under article 26 of the Constitution and homes could not be entered and searched without a written order from a competent judge. However, owing to the special circumstances prevailing in the country that provision had been suspended and, in some exceptional cases, the Sandinista Police had conducted searches without warrants.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

414. With reference to those issues, members of the Committee wished to know whether Decree No. 639 of 1981 also applied to churches, sects or denominations, in addition to "associations" or "organizations"; what regulations governed the registration, operation and control of religious denominations; what measures had been taken to enforce articles 1, 2 and 3 of the General Act on Social Communication Media and its amendments and what had been the outcome of prosecutions under that Act; and whether there were any privately owned radio and television stations and, if not, whether measures had been taken to ensure that dissenting opinions were given a fair opportunity to be heard.

415. Members also wished to know who determined the grounds for revoking the legal personality of a religious association; whether religion was taught in non-denominational schools; how the sharp decrease in the number of Catholic clergy

between 1979 and 1986 could be explained; whether persons in the media could be held criminally responsible under provisions of the General Act on Social Communication Media; whether there were any requirements, other than registration, for establishing a radio or television station or founding a newspaper; and whether an independent code of ethics in journalism existed in Nicaragua.

416. Replying to questions raised concerning freedom of religion, the representative of the State party said that religious associations or organizations were regulated by the law of 15 November 1983 (Decree No. 1346) but that responsibility for the central registration of associations was vested in the Ministry of Interior. In national security cases, the power to confer or revoke legal personality rested with the National Assembly. There was complete freedom to provide religious instruction in private and public schools and colleges. In fact, most private schools were run by priests and were heavily subsidized by the Government. The problems affecting religious groups were due to war conditions and not to persecutions.

417. Referring to questions relating to freedom of expression, the representative said that there were 25 private radio stations in the country but that all television stations were State controlled. Opposition parties had been given equitable access to radio and television during the 1990 election campaign. Censorship under the Mass Media Act had been imposed only to a limited degree in instances where the media had incited to violence or undermined national security. In order to allay fears that the Act could be used in a repressive manner during the election campaign, control of the media had been transferred to the Supreme Electoral Council, and that Council had implemented the 1989 Electoral Act in such a way as to maximize access to the media. Both the Mass Media Act and Decree No. 511, which restricted information dealing with internal security matters and national defence, had been superseded by Act No. 78 of 8 March 1990. Nicaragua had no independent code of journalistic ethics.

Freedom of assembly and association

418. With regard to that issue, members of the Committee wished to know what were the main new provisions governing associations as contained in Decree No. 1346 and whether that Decree had entered into force; whether public officials and civil servants could form trade unions; what were the expected consequences of the new Labour Code; and what rules applied to non-political demonstrations.

419. In his reply, the representative of the State party said that Decree No. 1346 was in force and that more than 130 civil and secular associations had been created subsequent to its adoption. The new Labour Code under discussion was designed to guarantee compliance with the rules of the International Labour Organisation. There were no unions for public officials and civil servants. Public demonstrations for which permits were required were controlled by the Sandinista Police in accordance with the relevant regulations.

Protection of family and children

420. With reference to that issue, members of the Committee wished to receive information on the law and practice relating to the employment of minors.

421. In his reply, the representative noted that the employment of minors was covered under Title IV, Chapter IV of the Constitution and by Decree No. 1065. Article 84 of the Constitution prohibited child labour. Appropriate child development programmes had been established.

Right to participate in the conduct of public affairs

422. In connection with that issue, members of the Committee wished to know how equitable access to public service for members of ethnic, religious or linguistic minorities, and of the various political parties, was ensured; whether members of the armed forces could belong to political parties and participate in political life; and for how long a period and through what circumstances political rights could be forfeited. In his reply, the representative said that the Civil Service Act banned discrimination on grounds of sex, religion or political opinion and was designed to guarantee political pluralism among State employees. There was complete freedom to form political parties and 10 of these had participated in the recent elections. Members of the armed forces could be elected to public office after having renounced their military office and could participate fully in the political life of the country to the extent compatible with their former military activities. Persons found guilty and sentenced for offences against public policy were subject to the suspension of their political and civil rights. Minorities could discuss their problems in the National Assembly in accordance with the Statute of Autonomy.

Rights of persons belonging to minorities

423. With reference to that issue, members of the Committee wished to know what changes had been introduced by the Statute of Autonomy for the Atlantic Coast Region and how the minorities in this region had voted in the elections held on 25 February 1990.

424. In his reply, the representative of the State party said that the procedures for electing political and administrative authorities in the two autonomous regions had been changed so as to guarantee respect for the traditions of the ethnic groups in each region. Economic projects in the areas of fishing, air transport, education and farming as well as programmes for disseminating information in native languages in the press and on radio and television, had been introduced. The exploitation of mining, fisheries and other resources had also been promoted in order to protect the rights of minorities, consolidate the country's political and administrative structure and ensure that there was no discrimination between the Atlantic Coast region and the Pacific Coast region. Special efforts had also been made to ensure that minorities participated fully in the February 1990 elections. The Opposition National Union (UNO) had won most of the minority constituencies in the region but some Sandinista candidates had also been elected.

General observations

425. Members of the Committee expressed their appreciation to the State party for submitting an excellent report, and commended the delegation for its co-operation and competence in replying to the Committee's questions. Members noted with particular satisfaction that the recent legislative review had led to the repeal or amendment of some unsatisfactory provisions relating to the maintenance of law and order and to national security. The enactment of the recent *Amparo* Act, the

abolition of the Anti-Somoza People's Tribunals, the adoption of the 1987 Constitution and, above all, the free and internationally monitored elections in February 1990 and the expected smooth transfer of power to the new Government had all been excellent developments that augured well for the continued consolidation of the democratic process and the improvement of the human rights situation in the country. At the same time, members recalled that there had been derogations from a whole range of rights during several very long states of emergencies and that certain specific questions in that regard, as well as in respect of various constitutional and legal provisions, had not been satisfactorily answered. Members continued to feel special concern about several troublesome areas, including the powers of the police to inflict punishment of up to six months; insufficient press freedom; inadequate guarantees for ensuring the independence of the judiciary; non-compliance with article 9, paragraph 3, of the Covenant in respect of the length of pre-trial detention; the lack of adequate provisions for compensating victims of human rights violations; and the excessively broad scope of the Amnesty Act of 1990.

426. The representative of the State party thanked the members of the Committee for their keen interest and assured them that their comments would be transmitted both to the current Government and the incoming Government. After the many sacrifices for peace made by the Nicaraguan people peace was now at hand. He was confident that this would create optimum conditions for democratic progress and the protection of human rights.

427. Concluding the consideration of the second periodic report of Nicaragua, the Chairman again thanked the delegation for the constructive manner in which it had conducted its dialogue with the Committee. The favourable developments that had resulted from the recent elections had impressed the entire world. He hoped that issues not fully covered in the second periodic report would be dealt with in the next report which, he trusted, would show continued improvement in the implementation of the Covenant in Nicaragua.

San Marino

428. The Committee considered the initial report of San Marino (CCPR/C/45/Add.1) at its 980th and 981st meetings, held on 9 July 1990 (CCPR/C/SR.980-SR.981).

429. The report was introduced by the representative of the State party, who noted that since the submission of the report the Republic of San Marino had acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and had accepted the competence of the European Commission of Human Rights and the European Court of Human Rights. In addition, as a result of a recently concluded agreement with Italy, San Marino had regained its autonomy in the field of information. That would have a favourable impact on the exercise of the right to receive information.

430. Members of the Committee extended a warm welcome to the delegation and noted that San Marino enjoyed a positive reputation in so far as respect for human rights was concerned. Members expressed concern, however, at the brevity of the report, noting that it had not been prepared in accordance with the Committee's guidelines. They hoped that in its next report the State party would include information on all of the articles of the Covenant and provide practical illustrations of the implementation of those provisions.

431. With reference to article 2 of the Covenant, members of the Committee wished to receive clarification as to the existence of a written Constitution or of other fundamental provisions that possessed constitutional status, or of a basic charter of human rights. They also wished to know what was the precise status of the Covenant in domestic legislation; whether a hierarchy of the law existed in general; how a conflict between domestic legislation and the Covenant's provisions would be resolved; whether special committees or commissions existed to deal with human rights issues; and whether the text of the Covenant and other information concerning it had been disseminated throughout the country. In addition, members wished to receive clarification of the statement in the report that not all of the Covenant's provisions could be invoked before the courts and requested further information on Law No. 59 of 8 July 1974.

432. With regard to self-determination, members of the Committee asked for clarification of the Republic's relationship with Italy in so far as the external aspects of self-determination were concerned and wished to know whether this aspect had created any problems in the human rights field, particularly in respect of extraditions or claims of extraterritoriality.

433. With regard to article 3 of the Covenant, members of the Committee wished to know what the proportion of women was in public office, particularly in the legislature, the Congress of State, the Civil Service and in the field of education, and whether San Marino had acceded to the Convention on the Elimination of All Forms of Discrimination against Women.

434. Observing that no information on article 4 of the Covenant had been provided in the report, members of the Committee wished to know what legal provisions would be applicable if a state of emergency were to occur in the Republic and whether any controls existed to ensure that in such a situation there would be no derogation from the provisions of the Covenant.

435. Noting, with reference to article 6 of the Covenant, that the death penalty does not exist in San Marino, members wished to know how serious crimes were defined in San Marino and what the maximum sentence was for such crimes.

436. With reference to article 7 of the Covenant, members welcomed San Marino's accession to the Convention against Torture but wished to receive specific information concerning the existing legal provisions prohibiting cruel, inhuman or degrading treatment or punishment.

437. Concerning article 9 of the Covenant, members of the Committee wished to know how the presumption of innocence was ensured in criminal proceedings; what provisions existed for a person to appeal against his detention, especially in case the police failed to inform the court of an arrest; what was the maximum length of provisional arrest; how long it took, on average, to adjudicate a criminal case; and whether there was a significant backlog of criminal cases awaiting trial. Information was also requested concerning the practice relating to release on bail.

438. Regarding article 10 of the Covenant, members of the Committee requested information concerning legal provisions governing the treatment of prisoners or other detainees and wished to know whether the provisions of paragraph 2 of article 10, concerning the segregation of accused from convicted persons, were being complied with.

439. With reference to article 13 of the Covenant, members of the Committee wished to receive further information on articles 121 and 127 of the Penal Code, regulating the expulsion of foreigners, and wished to know whether administrative authorities as well as judges were empowered to issue expulsion orders.

440. Members of the Committee requested clarification as to whether the requirements of paragraph 3 of article 14 of the Covenant were fulfilled as a matter of law and practice, noting in that regard that the lack of provisions for compensation for a miscarriage of justice was contrary to article 14. They also wished to know whether legislation providing for compensation was being envisaged; whether the requirement that foreigners pay the *cautio judicatum solvi* was compatible with articles 2, 14 and 26 of the Covenant; what the arrangements were for the training of lawyers and the appointment of judges and ensuring the latter's independence; why only non-citizens could be appointed as judges; whether San Marino had administrative courts in addition to the civil and penal courts; and whether consideration had been given to establishing the institution of Ombudsman.

441. Referring to articles 17 and 18 of the Covenant, members wished to know what were the exceptional circumstances that justified violation of the privacy of communications and whether the laws of libel and slander did not provide for excessive restrictions on the right to freedom of expression.

442. With regard to article 22 of the Covenant, members of the Committee wished to receive information on legal provisions governing the establishment of new political parties in the country.

443. In connection with articles 23 and 24 of the Covenant, members wished to know whether there was a difference in the equality of rights between married and unmarried couples and what protection and assistance was given to mothers by the community. Clarification was also requested of the term used in the report relating to the "moral equality" of spouses.

444. With reference to article 25 of the Covenant, members of the Committee wished to receive information concerning laws relating to the right to vote.

445. With reference to article 27 of the Covenant, members of the Committee wished to know whether there were any national or religious minorities and, if so, whether any problems had occurred in relation to the exercise of rights covered under that article.

446. In response to questions raised under article 2 of the Covenant, the representative said that after the adoption of an international treaty by the Parliament of San Marino, a decree was promulgated that gave the treaty the force of law. The treaty could then be invoked by any citizen. In the case of the Covenant, there had been no specific legislation referring to its provisions except for the decree by which it had entered into force. The Republic of San Marino did not have a written Constitution. However, since its population consisted of only 24,000 inhabitants, fundamental human rights had been guaranteed in practice, under the common law, since the seventeenth century. In 1974, Law No. 59 had been adopted providing for formal legal protection of such rights and freedoms including, in general, those set out in the Covenant. Article 1 of that Law recognized the rules of international law as an integral part of domestic law. The provisions of Law No. 59 could be amended only by a two-thirds majority of Parliament, whereas ordinary laws were adopted by a simple majority.

447. Concerning the question of self-determination, the representative said that there were no constitutional links between San Marino and Italy but only conventional links. The first Convention dated from the mid-nineteenth century and regulated various aspects of inter-community life. There were no customs posts on San Marino's frontiers and customs arrangements were left entirely in the hands of the Italian authorities. Full reciprocity of the political and civil rights of citizens of both countries had been established in article 4 of a 1939 Convention which provided, inter alia, that citizens could hold public office in either country and engage in trade and the liberal professions on an equal footing.

448. With reference to questions raised under article 3 of the Covenant, the representative said that despite the fact that recognition of the rights of women had come rather late, the proportion of women who were active in public service was relatively high. Five of the 60-member Great and General Council and 2 of the 10-member Congress of State, the central organ of executive power, were women. Three women had in the past held the position of Captain Regent, which was equivalent to head of state. The majority of posts in the field of education were held by women and they were also well represented in the diplomatic and consular services and at the highest levels of the Civil Service. Despite the desire within the Republic to accede to the Convention for the Elimination of All Forms of Discrimination against Women, this had not yet occurred. The smallness of San Marino's internal administrative structure influenced the international obligations which it was able to undertake and consequently there was a tendency for the Republic to be late in acceding to international treaties.

449. Responding to questions concerning article 14 of the Covenant, the representative explained that eligibility for appointment to the judiciary had been limited, by statute, to non-citizens since the seventeenth century. Until recently, judges had been appointed to three-year terms which were subject to reconfirmation by the Council. The requirement for reconfirmation every three years had been abolished recently but the possibility of returning to the previous system was again under consideration as a measure to ensure, in a country of such a small population, the impartiality of justice. Administrative tribunals were first established on 1 January 1990.

450. Regarding the establishment of political parties, the representative noted that under article 16 of Law No. 59 of 8 July 1974 all citizens had the right of association and to join trade unions or political parties. Six political parties were currently represented in the 60-member Great and General Council.

451. With reference to article 25 of the Covenant, the representative explained that all citizens 18 years of age and over who had not had their political rights suspended had the right to vote, as were the 18,000 citizens of San Marino who resided abroad. Overseas residents were entitled to repayment of 75 per cent of the costs incurred in their return to the Republic every five years to vote in the elections to the Council. The right to be elected to the Council applied to all citizens of adult age who had not forfeited their political rights, except that members of the same family could not be elected to the Council at the same time. There were no minorities in the Republic of San Marino.

General observations

452. Members of the Committee thanked the representative of the State party for the explanations she had provided, which had clarified the main thrust of San Marino's written legislation. They considered, however, that although the Law No. 59 of 8 July 1974 containing the declaration of rights of citizens appeared to be a statute in some ways providing for the same guarantees as a constitutional provision, many areas of domestic legislation would need to be further clarified in the next report, including the basic questions of whether all the provisions of the Covenant were implemented and whether such provisions could be invoked before the courts. Members also expressed concern about specific provisions, including the lack of a provision for the review of judicial decisions by a higher court; the lack of provisions for compensation in the event of a miscarriage of justice; and the lack of security of tenure for judges.

453. Members expressed the hope that the State party's second periodic report would be prepared in accordance with the Committee's guidelines and would contain more precise information on the legal status of the Covenant and on the implementation of each of its articles, as well as details regarding the practical difficulties that had been encountered. They also hoped that the report would contain responses to the unanswered questions raised during the meeting, and suggested that copies of relevant documents, including the texts of conventions, laws and judicial decisions, be included in the report.

454. In concluding the consideration of the initial report of the Republic of San Marino, the Chairman again thanked the State party's delegation for its full co-operation in a constructive dialogue with the Committee that compensated for the paucity of information in the report. The Committee looked forward to receiving fuller information in San Marino's second periodic report, which was due in January 1992.

Viet Nam

455. The Committee considered the initial report of Viet Nam (CCPR/C/26/Add.3) at its 982nd, 983rd, 986th and 987th meetings, held on 10 and 12 July 1990 (CCPR/C/SR.982, SR.983, SR.986 and SR.987).

456. The report was introduced by the representative of the State party who, after describing her country's difficult history during the past 45 years, stated that the Socialist Republic of Viet Nam had very recently embarked on an extensive movement of renovation and radical reform aimed at liberalizing the economy and democratizing the political system; that created obligations with regard to the respect and promotion of human rights, both for individuals and for the Government.

457. The representative drew the attention of the members of the Committee to the disastrous consequences for Viet Nam of the war of aggression waged against it in defiance of international opinion. She also drew attention to the fact that in 1985 the Vietnamese National Assembly had adopted the country's first modern Penal Code which, *inter alia*, made provision for measures to punish crimes against peace, crimes against humanity, war crimes and the recruitment of mercenaries.

458. Members of the Committee noted with appreciation that the initial report of Viet Nam was concise and had been prepared in accordance with the Committee's guidelines and that it dealt with all the articles of the Covenant with the exception of article 4. At the same time, they requested more information on the de facto situation prevailing in the country and on the difficulties encountered by the Government in implementing all the provisions of the Covenant.

459. With regard to article 2 of the Covenant, members of the Committee inquired about the rank of legal provisions in general and more specifically about the position of the Covenant in the internal legislation of Viet Nam; whether it could be invoked and whether it had to be applied by the courts; whether the text of the Covenant had been published and disseminated throughout the country; and whether the ratification of the Covenant had led to changes in certain laws and customs. Having noted with satisfaction the ratification by Viet Nam of a very large number of international human rights instruments, they asked which institutions guaranteed Vietnamese the possibility of enforcing the rights set forth in those instruments.

460. Members of the Committee also asked for more detailed explanations on the classification of fundamental rights in the report and on the problem of conformity of articles 2 and 4 of the Constitution of Viet Nam with the provisions of the Covenant. They also asked for further information on the ongoing process of renovation in Viet Nam and its possible repercussions on respect for the human rights proclaimed in the Covenant. In addition, members of the Committee noted that no mention was included, either in the Constitution or the report, of the right to non-discrimination on grounds of political opinion, which was guaranteed under article 2, paragraph 1, of the Covenant, and wished to know what remedies were available to victims of such discrimination. Members also expressed concern about the stress placed consistently in the report on the sovereign right of the State over the individual, who was required to be in the service of society, pointing out that such an attitude was in implicit contradiction with the Covenant.

461. In connection with article 1 of the Covenant, members of the Committee, having stated that the atrocities committed by the Pol Pot régime in Cambodia should be condemned, went on to say that internal problems should be resolved by the populations themselves and that intervention by Viet Nam in the affairs of Cambodia was not desirable. In this context, they inquired whether all Vietnamese troops had been withdrawn from Cambodia. They also requested clarification of Viet Nam's reservation to article 48, paragraph 1, of the Covenant on the grounds that "all sovereign States are not permitted to adhere to the Covenant on a basis of equality".

462. With regard to article 3 of the Covenant, members of the Committee asked which inequalities had existed between men and women before the 1986 Law on Marriage and the Family had been amended and revised; which amendments it had been necessary to defer and whether they would be taken into account when preparing the new civil code. Detailed information was also requested about the percentage of women who were members of the National Assembly, the State Council, the Council of Ministers, the Supreme People's Court and the Supreme People's Control Commission.

463. Concerning article 4 of the Covenant, members of the Committee had asked whether the protracted periods of struggle experienced by Viet Nam had not left after-effects, even 15 years after the unification of the country; which rights had not been restored and which rights had been suspended since the entry into force of

the Covenant; whether the Constitution made provision for martial law or any other state of emergency; and what were the enforcement procedures and which rights could be suspended in such an eventuality.

464. With reference to article 5 of the Covenant, members observed that while the war was no doubt responsible for many of the difficulties faced by Viet Nam in applying the provisions of the Covenant, that fact should not become a justification for non-respect of certain fundamental rights or for placing impermissible limitations on the rights and freedoms recognized in the Covenant.

465. Regarding article 6 of the Covenant, members wished to know which crimes were subject to the death penalty and requested statistics for the last five years on the number of persons sentenced to death, the number executed and the crimes involved. Having noted that the Vietnamese Penal Code stipulated an excessive number of offences, some of which were political or economic in character which could lead to the death sentence, members of the Committee inquired whether the Vietnamese authorities were considering reducing the number of offences of this kind. They also asked for details of family planning policies and on the provisions regulating abortion, particularly for married women.

466. With regard to article 7 of the Covenant, members of the Committee requested more detailed information on the situation of persons detained in re-education camps and on the measures taken by the Vietnamese authorities to improve the situation. They also wished to know whether measures had been taken to provide training for members of the police and the armed forces on the rights of individuals recognized in national legislation and in international instruments; whether investigations had been opened to shed light on the cases of death and brutality and, if the answer was yes, what the outcome had been.

467. Concerning article 8 of the Covenant, members asked for information about forced labour and asked how that practice fitted in with the policy to rehabilitate those sentenced to prison. More detailed information was requested on how the re-education camps functioned; on the reasons for which a person was sent to a camp; on the possibility of challenging an order concerning detention in a re-education camp; and on the compatibility of national legislation with the provisions of article 8, paragraph 3, of the Covenant.

468. With regard to article 9 of the Covenant, members of the Committee requested clarifications on the role of the People's Control Commissions; the procedures for electing their members; the conditions which members of People's Control Commissions should satisfy; the procedure and functioning of the People's Control Commissions; the remedies available to the individual who believed that the Control Commission had committed an abuse against him, and the authorities who monitored the People's Control Commissions in order to prevent abuses. Information was also requested on the system of bail; the compensation to which victims of unlawful detention and condemnation were entitled and the procedure to be followed in order to obtain it; as well as the maximum period for the possible extension of custody.

469. Concerning article 10 of the Covenant, members of the Committee raised the question of what was meant by the expression "socio-political education" and whether a convicted person could refuse to submit to this practice. They asked whether there were differences between penal establishments and re-education establishments and about the grounds on which individuals could be confined in

them. Members of the Committee pointed out that re-education camps were a form of detention without a hearing and that such a measure was incompatible with the new Penal Code and, in any case, contrary to the provisions of the Covenant. The question was also raised of whether solitary confinement existed in Viet Nam and in which cases it was applied; of the age to which the legislation on juvenile delinquents was applied and that of the majority for the purposes of criminal law.

470. With regard to article 12 of the Covenant, members of the Committee requested clarification of the term "limitations established by law for reasons of security and public order" and wished to know what restrictions were placed on foreign travel by public employees. Members also asked for further information on the procedure for departure from and return to Viet Nam and whether any discriminatory measures could be taken against people returning if they had left the country illegally. Members of the Committee asked whether residence papers existed in Viet Nam; whether these documents constituted a limitation on freedom of movement inside the country; and whether non-possession of such a document could lead to prosecution. Having raised the issue of the "boat people", members of the Committee asked what measures were being taken by the Vietnamese authorities, internally, to restrict or to prevent this exodus.

471. With reference to article 14 of the Covenant, members of the Committee asked for information on the structure of the judiciary and the extent to which the independence of the judiciary was guaranteed. Clarification was requested as to the authority which appointed the members of courts, the guarantees of independence, the measures provided to ensure that external bodies, such as the People's Control Commissions, did not intervene in the activities of the courts, and the procedure for settling the conflict of competence between a court and a People's Control Commission. Further information was requested on the procedure and all the steps to be taken in a case where the defendant or his defender requested more time if they were short of time to prepare the defence. The question was also asked whether the right to use their own spoken language and scripts granted to citizens belonging to the different minorities also applied to foreigners. The opinion was expressed that the principle of the presumption of innocence did not appear to be fully respected in Viet Nam and that the rules concerning the handing down of the final sentence appeared to be at odds with the provisions of article 14 of the Covenant.

472. Concerning article 15 of the Covenant, members of the Committee asked for an assurance that non-retroactivity of the law was still the rule in Viet Nam. They commented that unlike Vietnamese legislation, article 15 of the Covenant did not provide for any possibility of awarding a heavier penalty for an offence committed before the adoption of a new law.

473. Concerning article 18 of the Covenant, members of the Committee, having noted that certain abuses of the right of religious freedom have occurred in Viet Nam, asked in what circumstances the authorities considered that there was an abuse of the right of religious freedom and requested specific examples of such abuses. They also asked whether measures had been taken against the perpetrators of such abuses. Members also wished to know whether the right to freedom of religious belief was extended to all creeds or whether there were some that were subject to restrictions.

474. With respect to article 19 of the Covenant, members expressed the view that article 67 of the Constitution considerably restricted the scope of the rights contained in article 19 of the Covenant and requested clarification in that regard. Clarifications were requested on temporary censorship and on what was meant by "the case of emergency and if it is necessary". Members also asked whether censorship had been applied in practice; whether foreign newspapers could be obtained in Viet Nam, and whether the activities of foreign correspondents were subject to any restrictions.

475. In connection with article 22 of the Covenant, members of the Committee asked whether there were independent trade unions in Viet Nam other than the Viet Nam Trade Union Confederation and, if so, whether they had the same rights as the Confederation. They also asked for more information on the legal procedure for forming trade unions. With regard to the reference to persons who have been "deprived of citizens' rights or are being prosecuted before the courts", they asked in which circumstances one could be deprived of these civic rights.

476. With regard to articles 23 and 24 of the Covenant, members of the Committee wished to have further details about coercive marriage; on the effects of religious marriage vis-à-vis civil marriage; on de facto marriage; and on the rights of children born out of wedlock, particularly from the viewpoint of inheritance. Members also asked whether there was any discrimination among children, in actual practice, on the basis of the political background of their parents.

477. With regard to article 25 of the Covenant, the question was raised of the leading role of the Communist Party and the compatibility of this situation with respect for the political rights protected by the Covenant.

478. Concerning article 26 of the Covenant, members wondered whether contact had been fully restored between North and South and whether tension and recrimination had abated; and asked specifically whether people in the South who had taken part in the armed struggle enjoyed the same rights as those who had served in the armed forces of the North. Members also wished to know whether Communist Party members were privileged, in fact if not in law, as far as the enjoyment of specific social and economic rights was concerned; whether the purpose of the identity cards delivered to citizens was simply to provide them with a document to prove their identity or whether certain rights and privileges were extended to holders of such documents depending upon their nature; how and when the identity documents were issued; on what grounds they could be refused; and the extent to which such a refusal could be considered as tantamount to the deprivation of civil rights. Members also asked what the Government of Viet Nam was doing to improve the reportedly very bad situation of large numbers of Vietnamese workers who were working outside the country, especially in Eastern Europe.

479. With reference to article 27 of the Covenant, members sought clarification of the term "backward customs", used in the report, and asked how the distinction was made between good and bad customs and how the latter had been abolished. They also wished to be provided with examples of what measures had actually been taken in respect of minorities so as to be able to ascertain whether their treatment had been consistent with the protections stipulated in article 27 of the Covenant.

480. Replying to questions asked by members of the Committee, the representative of the State party said that as far as the relationship between international instruments and domestic legislation was concerned, the Vietnamese authorities

recognized that the application of those instruments did not depend solely on constitutional or legislative provisions, which generally speaking were not enough in themselves. Viet Nam appreciated the assistance that the Committee rendered to States parties by reminding them energetically of their obligations under the Covenant. Just recently a decree-law had been adopted on the signature, ratification and application of international instruments, which would need to be followed henceforth by all State organs. Viet Nam certainly intended to move ahead with the implementation of the Covenant, but it was faced with immeasurable difficulties, due among other things to the fact that it was isolated and without resources. The representative expressed the hope that United Nations bodies would help Viet Nam to continue to progress along its chosen path, without having to suffer any interference in its internal affairs.

481. The representative described different aspects of the process of renovation on which Viet Nam had embarked, and in particular renovation in the economic and legislative fields. As far as the economy was concerned, since the Sixth Congress of the Communist Party, the State and collective enterprises were no longer the only two constitutionally recognized economic sectors; private, mixed and family enterprises and foreign partners were also acknowledged as economic sectors. As far as the legislative field was concerned, all laws now required a two-thirds majority and no longer had to be adopted unanimously.

482. On the question of the partition of the country into North Viet Nam and South Viet Nam, she stressed that reunification was a great blessing for the country, since far from engaging in fraticidal strife, the citizens of the former halves of the country lived together in harmony and co-operation. With regard to the role of the Communist Party, she said that it must be realized that the introduction of a multiparty system, which some thought desirable, would take a great deal of time and was not in any case in keeping with the Vietnamese mentality. The Communist Party remained, but the only organ vested with constitutional and legislative powers was the National Assembly, in which the Party did not intervene.

483. With regard to the incompatibility some members of the Committee had found between certain constitutional provisions and those of the Covenant, the representative explained that most of those provisions no longer existed. A new constitution was being drawn up in Viet Nam, essentially with the aim of establishing a new balance of power in favour of the National Assembly, in which there was the fullest possible popular participation.

484. Replying to questions asked by members of the Committee in connection with article 8 of the Covenant, the representative of the State party observed that re-education was indispensable as part of efforts to promote national reconciliation. She stressed that once a person came out of a re-education camp, he became an ordinary citizen again, who no longer needed to be ashamed of his past and did not carry any stigma as a result.

485. In reply to questions asked by members of the Committee about article 9 of the Covenant, the representative of the State party said that directive No. 49 on administrative detention was not in any way illegal, but derived from a decree of the State Council. The Legislative Commission had admittedly asked for some provisions of the legislation in that field to be amended or abrogated in order to ensure greater respect for genuine guarantees in accordance with the law, but it remained the case that administrative detention was a necessary measure. It was not applied arbitrarily, but in strict compliance with the law.

486. With reference to questions asked by members of the Committee on article 12 of the Covenant, the representative of the State party said that there were three types of procedures regulating exercise of the right to leave the country and return there. As far as the "boat people" were concerned, the Vietnamese Government had stated that voluntary repatriation from the countries of first asylum would take place in conditions guaranteeing the safety and dignity of the persons concerned in accordance with domestic and international law and would not be accompanied by any oppressive or discriminatory measures. The people repatriated would be authorized to return to their place of origin or to go to another place of their choice, and the Government would facilitate their reintegration into everyday life. As regards the freedom of movement and residence, she explained that Vietnamese citizens had the right to choose their place of residence freely and were free to come and go. There were certain restrictions on those rights, applying essentially to persons who had been convicted, and that was for reasons of law and order and security, and not for economic reasons. Every Vietnamese citizen held both an identity card and a residence card. The latter, which did not confer any particular privilege, was intended to serve as evidence of the holder's place of domicile and was issued by the local police authorities. The system of residence cards had not been thought up in order to prevent citizens from choosing to live wherever they saw fit, but in order to maintain a balance in the distribution of the population between town and country.

487. In answer to the questions asked by members of the Committee on article 18 of the Covenant, the representative of the State Party pointed out that the great majority of the Vietnamese people traditionally practised the Buddhist religion, which was more a way of life than a religion in the strict sense of the term. She considered accusations made by foreign organizations concerning alleged arbitrary arrests of members of religious communities to be entirely without foundation. No one had been arrested in Viet Nam, she said, because of his religious convictions.

488. Regarding the questions raised by members of the Committee on article 22, the representative of the State party said that the law of 20 May 1957 on freedom of association no longer met current needs and that a new law was in the process of being drafted. As soon as it came into force, the Vietnamese authorities would inform members of the Committee of the conditions that had to be fulfilled in order to set up an association.

489. Finally, the representative of the State party, on behalf of the Vietnamese delegation, invited the Committee, together with non-governmental organizations, such as Amnesty International, to find out about the true situation in Viet Nam for themselves and to see the real nature of the efforts being made in the country to ensure respect for justice and humanitarian laws.

General observations

490. The members of the Committee thanked the Vietnamese delegation for providing the Committee with further information in addition to that in the initial report, particularly with regard to the process of renovation. Finding that the Vietnamese delegation had thrown much light on the situation in Viet Nam from various angles, they observed that it had not provided enough information on the practical implementation of the Covenant. The members of the Committee drew attention to a number of fields which continued to give grounds for concern and raised points to which replies had not been given during the discussion.

491. Members of the Committee made a number of specific observations and comments in the foregoing regard. It was noted, for example, that real pluralism had not yet been introduced in Viet Nam and that problems still remained in providing for the exercise of political rights. In many of the areas that had been touched upon, it was clear that Vietnamese law and practice were far from being in conformity with the Covenant. Concerning the practice of re-education, members wondered whether concrete evidence of criminal conduct was available in respect of all detainees in re-education camps and which courts had decided such cases; and when such trials had taken place. It was not clear what specific restrictions were contained in legislation relating to the right to study, travel or reside abroad and whether such restrictions were compatible with article 12, paragraph 3, of the Covenant. Regarding administrative detention, the question was not whether that practice was legal under domestic legislation but whether the relevant law was compatible with the international obligations assumed under the Covenant. The same question applied to legislation under which the members of certain religious sects were detained, freedom of expression was restricted, or persons were assigned to house arrest without trial. Concern was also expressed that recent administrative decrees were incompatible with the more liberal measures introduced under the new Penal Code.

492. Noting that new legislation in the area of freedom of association was under consideration, members stressed the importance of not leaving large discretionary powers in that regard to administrative authorities. In that connection, particular reference was made to the important role of private human rights groups in informing the population of their rights, a vital function that could not be performed if such groups were not authorized. Members also called special attention to the fact that while national practices had to be examined in the light of each country's history and culture, it was important to realize that the basic purpose of providing for the international protection of human rights was to establish certain universal norms that were recognized by all States.

493. The members of the Committee expressed the hope that on returning to their country the members of the Vietnamese delegation would bring to the attention of their authorities the summary records of the meetings at which the Committee had considered Viet Nam's initial report. They trusted that needed changes would be introduced and that the State party would provide in its next report the type of information the Committee needed in order to be able to help it in its important programme of renovation.

494. The representative of the State party said that the delegation appreciated the frank suggestions made by the members of the Committee. Viet Nam fully realized the need for change and in fact was already changing, and she hoped that, by the time the second periodic report was submitted, she would be able to identify many improvements. The delegation would be happy to return to the Committee to continue the dialogue that had been initiated. In concluding the consideration of the initial report of Viet Nam, the Chairman thanked the Vietnamese delegation for its willingness to co-operate with the Committee in a constructive dialogue. He said that the Committee would appreciate it if the Government of Viet Nam would in due course provide answers to the questions raised by members, and also give information on any possible difficulties encountered in implementing laws and judicial procedures designed to ensure the enjoyment of the rights recognized under the Covenant.

Tunisia

495. The Committee considered the third periodic report of Tunisia (CCPR/C/52/Add.5) at its 990th to 992nd meetings, on 16 and 17 July 1990 (CCPR/C/SR.990-992).

496. The report was introduced by the representative of the State party, who highlighted developments since the submission of Tunisia's second periodic report, and in particular events since 7 November 1987, the date on which Mr. Ben Ali had become President of the Republic. Tunisia had thus firmly embarked on the promotion of human rights and personal freedoms, with due respect for its tradition of openness and tolerance. Several commissions had been set up to review the principal legislative texts in force and to ensure that the provisions of the international instruments, immediately applicable under 52 of the Constitution, were fully respected. In addition, on 7 November 1988, a National Covenant had been formulated establishing national sovereignty, the republican régime, pluralism and respect for the rights of individuals. In such a structure, equality between men and women constituted a priority, in accordance with the preamble and article 6 of the Constitution. Nevertheless, such protection was necessarily limited in the socio-cultural environment prevailing in Tunisia.

497. Emphasizing his Government's democratic and liberal policy, the representative of Tunisia said that legislation relating to political parties had been enacted on 3 May 1988. However, anyone who wished to found a political party was obliged to comply with a number of rules to ensure that the achievements of the past and present were maintained in the future. Thus, the principles and policies of the parties must exclude fanaticism, racism and any other forms of discrimination, and they were explicitly forbidden to base their actions on a particular religion, language, race or region. In addition, a special body competent to consider complaints by citizens who felt that the authorities were not complying with that legislation had been set up within the administrative jurisdiction.

498. There had been other developments in connection with the freedoms of religion, expression and association, such as, for example, the granting to the Tunisian branch of Amnesty International authorization to undertake its activities in complete legality, and the amendment of the Press Code on 2 August 1988, under which the banning of a newspaper fell within the exclusive jurisdiction of the courts. Among the many other developments were the abolition of the Court of State Security, the unreserved ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment, the abolition of the penalty of forced labour, the amnesty granted to persons convicted of political offences and the fact that no person under death sentence had been executed since 7 November 1987. An Act of 18 April 1990 had extended the powers of the Constitutional Council set up in 1987 by enabling it to be consulted on all draft organizational legislation and draft legislation relating to fundamental rights.

Constitutional and legal framework for the implementation of the Covenant

499. On this point, the members of the Committee asked: whether, during the period under consideration, there had been any cases in which the provisions of the Covenant had been directly invoked in the courts, mentioned in judicial decisions, or considered by courts as prevailing over those of a domestic law held to be at variance with the Covenant; whether the commissions set up, *inter alia*, to review the Penal Code and the Code of Penal Procedure and to reform the judges' statute

had completed their work; what were the revisions, if any, proposed or envisaged by those commissions and their effect on the enjoyment of the rights listed in the Covenant; what action had been taken during the period under consideration by the Tunisian League for Human Rights to promote and protect the enjoyment of human rights; what effect the National Covenant had had on the implementation of the rights covered by the International Covenant; and what were the prospects for ratification by Tunisia of the Optional Protocol to the Covenant.

500. Further information was also requested on the status of the International Covenant in Tunisian domestic law with regard to the possibility for victims of a violation of the Covenant to lodge an appeal which would be both effective and prompt and, in particular, on the "convergent mechanisms" mentioned in the report, which had been developed by Tunisia in order to guarantee the freedoms recognized by the Covenant. It was also asked: whether consideration had been given, within the context of the reform of the judges' statute, to modification of the operation of the Higher Council of the Judiciary so as to give it greater independence vis-à-vis the Executive; what activities had been undertaken in order to make the Covenant's provisions better known; whether the establishment of a multi-party system could be reconciled with a Constitution formulated on the basis of the single-party system; and whether representatives of political forces that were not officially recognized had participated in the adoption of the National Covenant.

501. On the question of relations between the Government and non-governmental organizations for the protection of human rights, clarification was requested concerning the independence of the Tunisian League for Human Rights, the extent of its competence with regard to allegations of violations of human rights and compensation for the victims of such violations, and its activities in the area of the promotion of human rights. It was also asked whether it had been consulted before Tunisia's periodic reports had been drafted and what activities had been undertaken by the Tunisian branch of Amnesty International.

502. On the question of the expansion of the competence of the Constitutional Council, it was asked whether that body was competent to express an opinion to the President of the Republic on the conformity of draft legislation with the Covenant, how were its members appointed, what was the duration of their mandate, in which circumstances could they be removed, in what way was its independence ensured, and what were the effects of its decisions, in particular if it declared a law unconstitutional. In this connection, it was asked whether consideration was being given to the establishment of another mechanism, independent of the Legislature and the Executive, which could take enforceable decisions.

503. In reply to the questions asked about the status of the Covenant in Tunisian domestic law, the representative of the State party pointed out that article 32 of the Tunisian Constitution established the primacy of international conventions over national law. Moreover, certain legislative texts, such as the Political Parties Act or the Act relating to medical and scientific experiments, referred explicitly to the relevant provisions of the Covenant. In the event of conflict between an international standard and a domestic legal provision, the judge tried as far as possible to apply the international rule even if in certain very rare cases, such as the principle of equality with regard to inheritance, the social environment prevented that from being done. Judges were nevertheless made aware of the Covenant and did not hesitate to apply it directly if it was expressly invoked as applying to the case in question.

504. On the question of the commissions which had been set up to review Tunisian legislation, the representative of the State party said that although several of them had not yet completed their work, draft texts concerning police custody, pre-trial detention and the abolition of forced labour had been adopted following their recommendations.

505. Replying to the questions asked about the Tunisian League for Human Rights, he emphasized that the League was particularly representative of the collective conscience of the population. The League and its governing bodies enjoyed absolute independence and its officers reflected all shades of political opinion. Its budget was patterned on that of an association. Its members were authorized to visit detainees. It had thus recently visited a number of detention centres, including the central prison in Tunis, in order to ascertain whether the authorities were complying with prison regulations and had found that substantial improvements had been made in that respect. The League was kept regularly informed by the Government of draft legislation affecting the rights of individuals. A senior official of the Ministry of the Interior directly answerable to the Minister was responsible for receiving all complaints or requests from the League and conducting inquiries in order to take action on them. Those activities had had very favourable consequences in many areas including, for example, the withdrawal of passports and suspension of deferment of military service in the case of students who had disrupted public order by instigating strikes at universities. In addition, the League was almost automatically consulted on any draft legislation relating to human rights and public freedoms, and had been associated with the drafting of the National Covenant.

506. Replying to other questions, the representative of Tunisia emphasized the fact that all the forces of the nation, including several political movements, had been involved in preparing the National Covenant, which was the tangible expression of the consensus the various political trends had sought to achieve in order to foster respect for the principles on which there was broad agreement in Tunisian society. Since the basis for this agreement was voluntary accession with a view to contributing to national development in peace, dignity and respect for freedoms and the human person, there was therefore no legal obligation to respect the National Covenant. The question of the ratification of the Optional Protocol to the Covenant was still being studied, although *a priori* there was no objection to its ratification. The provisions of the Covenant were taught in some establishments, such as the Police College, in order to promote respect on the part of future law enforcement officials for the principles established in the Covenant. The Constitution had not been conceived from the viewpoint of a single party system and it had therefore simplified the recent adoption of the organic law on the plurality of political parties. Tunisia had a presidential system in the context of which checks had been devised in order to counterbalance the extensive powers available to the President of the Republic. Moreover, the principle of life presidency had been abolished. With regard to the independence of the Judiciary, judges were appointed by the President of the Republic, due account being taken of the proposals submitted to him by the Higher Council of the Judiciary, which was made up of *ex officio* members and of members elected by their peers, thereby guaranteeing its independence. Judges might not be prosecuted unless the Council had lifted their immunity.

507. Answering the questions raised in connection with the Constitutional Council, the representative stressed that its creation only a few weeks after the Declaration of 7 November 1987 indicated an intention to establish a tradition in respect of consultations on the constitutionality of legislation in Tunisia. A recent law, dated 18 April 1990, stipulated that this body must obligatorily be consulted by the President of the Republic prior to the submission of draft organic laws and draft laws relating to fundamental rights to the Chamber of Deputies. When the Council considered certain legislation to be at odds with the Constitution, the President of the Republic could refer the draft for reconsideration to the ministerial department concerned and, usually, the draft was regarded as unconstitutional. In all cases, the President was required to communicate the opinion delivered by the Constitutional Council to the Chamber of Deputies. The Council could also be seized of any question relating to the organization and functioning of institutions. The possible seizing of the Constitutional Council to hand down opinions *a posteriori* on the constitutionality of legal texts, however, was still under discussion but, for the time being, was contemplated only for some stage in the future. Its members, whose number had been reduced from 11 to 9, (including the President of the Republic himself), were appointed by the President of the Republic and were made up of *ex officio* members and other prominent persons. The length of the mandate of those persons was left to the discretion of the President of the Republic whereas the *ex officio* members by right sat as long as they occupied their post.

State of emergency

508. With regard to that issue, members of the Committee wished to know whether there were any legal provisions, other than article 46 of the Constitution, relating to the introduction of a state of emergency and, if so, whether they were in conformity with the provisions of article 4, paragraph 2, of the Covenant. Additionally, it was inquired what the maximum duration of the state of emergency was: whether the National Assembly could adopt measures to bring the state of emergency to an end if it considered that circumstances justified it; and whether there was some form of judicial control over measures taken during such an emergency. Clarification was also sought of the extent of discretionary power held by the administrative authorities during a state of emergency.

509. In his reply, the representative of the State party explained that the decree of 26 January 1978 regulating the state of emergency had only been applied twice, in January 1978 and January 1984. In those cases the legislative and executive authorities had taken care that nothing was done beyond what was expressly stated in the decree. Furthermore, there was an administrative tribunal which was competent to deal with all administrative decisions and abuses and which pronounced an application for stay of action when necessary. Notwithstanding the state of emergency, there was no reduction in the power of that tribunal to oversee the decisions of the administration in all circumstances.

Non-discrimination and equality of the sexes

510. With reference to that issue, members of the Committee wished to receive detailed information regarding current plans to remove from Tunisian legislation remaining inequalities, such as those relating to inheritance, the granting of nationality by virtue of filiation, discrimination against the female spouse under article 407 of the Penal Code and the husband's prerogatives as head of the family;

and on the activities undertaken to enhance the role and status of women during the reporting period, particularly by the National Union of Tunisian Women. In addition, it was inquired whether there was any plan to secure equal treatment for all working mothers; whether the Education Act mentioned in the report also covered university education for women; whether filiation of a child could also be established through the wife or through an unmarried mother; and whether provisions were made for maternity leave in employment sectors other than the civil service. Clarification was, in particular, sought concerning areas where discrimination still existed in practice such as in the area of inheritance, where there seemed to be a clear conflict between the provisions of the Covenant and Tunisian legislation.

511. In his reply, the representative of the State party noted that the process of implementation of the principle of equality of the sexes in Tunisia since its independence had been a gradual one. Such evolution had had to avoid any false step that would have negatively affected family stability, based on ancestral rules and traditions. However that had not prevented the legislature from adopting many positive measures such as abrogation of polygamy and divorce by repudiation, equality in guardianship of children, the granting of custody of the child to the mother in case of the father's death, and the award of a pension to a spouse who had suffered moral or material injury. As regards nationality, the wife or mother could transmit her nationality to husband or child under certain conditions and a foreign child could obtain Tunisian nationality on the basis of a simple declaration made during the year before attaining majority. Article 207 of the Penal Code dated from 1913, when polygamy had been widely practised in Tunisian society. It would surely be revised towards greater equality in the context of the current revision of the Penal Code. Concerning the prerogatives of the husband as head of the family, it had to be recalled that the rights and duties of the spouses, as provided by the Code of Personal Status, corresponded to the functions actually carried out in the household by the man and woman. Women were represented on municipal councils in a proportion of 14 per cent, and six women had recently been elected as members of Parliament. There was a woman in the Government and girls constituted 44 per cent of the school population.

512. Inequality between the sexes still existed, but steady progress was being made towards more equitable legislation. For example, judges in divorce cases now were obliged to give priority to the wife in respect of the family home. With regard to inheritance, it was to be noted that since the Tunisian family generally had a strong sense of unity, the prospects of girls were not usually prejudiced. However, it was impossible to force the pace in that particular area, and to overturn principles that were 14 centuries old.

Right to life

513. With regard to that issue, members of the Committee inquired whether any revision of the Penal Code, with a view to curtailing the number of offences currently punishable by the death penalty, was being contemplated. In addition, information was sought regarding the difficulties which prevented the introduction of a bill to abolish the death penalty, and the application of such penalty to crimes of rape.

514. In his reply, the representative of Tunisia said that a special review commission on criminal legislation had proposed that the number of offences punishable by the death penalty should be reduced. Since 1987, no death sentences had been carried out; they had all been commuted to life imprisonment. The exact

length of the sentences which would actually be served would, however, depend on factors such as the conduct of prisoners. He further agreed that the list of offences punishable by the death penalty was long and that it should be shortened as a first step.

Liberty and security of the person and treatment of prisoners and other detainees

515. In connection with those issues, members of the Committee wished to know whether there had been any allegations of torture and similar offences during the reporting period and, if so, whether appropriate investigations were made and offenders brought to trial; what measures for fighting unemployment and preventing delinquency were being contemplated by the Tunisian authorities other than compulsory civil labour; whether there were any plans to repeal Act No. 78-22 of 8 March 1978; and what proportion of persons accused of offences or crimes were held in pre-trial detention and what percentage of the latter were detained for a period as long as 18 months. They also requested information on detention in institutions other than prison and for reasons other than crimes.

516. Additionally, detailed information was requested on 23 alleged cases of torture and three suspicious deaths in custody. In that regard, it was inquired whether those responsible had been tried, whether victims had been compensated, and what practical steps were being taken to bring an end to such practices. Members wondered what procedure, other than that of Act No. 87-70 of 1987 relating to the recording by police officers of any acts of violence committed against persons held in police custody, was followed in regard to allegations of torture or ill-treatment; and whether failure to provide medicines for detainees was considered as constituting ill-treatment. Clarification was also sought of the implementation of article 13 *bis* of the Penal Code, according to which magistrates were entitled to delegate the interrogation of suspects to police officers.

517. With regard to detention in custody, it was inquired whether detainees were entitled to apply for the assistance of a lawyer or to communicate with their families; what the maximum period was of detention in custody and on what basis such a period could be extended; the extent of the examining magistrate's power to decide on the duration of periods of detention; and what legal provisions, if any, were applicable to detention without trial. It was also asked whether there was any legislation governing the detention of drug addicts, vagrants, or persons with infectious diseases; whether a person detained in a psychiatric hospital had the right to apply for a judicial review of his case; and whether hard labour had been abolished by Act No. 89-23 of 1989. Lastly, members observed that obligatory civilian labour, used as a means for combating unemployment, appeared to be incompatible with article 8 of the Covenant.

518. In his reply, the representative of the State party emphasized that subsequent to the changes which occurred on 7 November 1987, it had been a priority of the authorities to implement effectively both the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and relevant domestic legislation. The Government was therefore making every effort to make the various relevant services aware of their responsibilities and to establish administrative structures to detect and investigate cases of abuses of power. During the reporting period, there had been 20 allegations of cases of torture, two thirds of which had been found justified. Those responsible had been sentenced to terms of imprisonment and automatically suspended from their posts. Concerning the three

cases of violent deaths in penal establishments, *ad hoc* investigations supported by medical evidence had shown that they involved suicide. One hundred and twenty nine cases of abuse of power by public officials had also been brought before the courts and, so far, nine sentences of imprisonment had been imposed. The dangers inherent in the multiplication of *commissions rogatoires* were recognized, but the lack of a sufficient number of examining magistrates made that practice unavoidable for the present.

519. Responding to other questions, the representative pointed out that the 1978 Act introducing civilian labour had been designed to benefit young people who were not following courses of study and had no employment. They were employed in various kinds of public works, received vocational training, and were paid the equivalent of the minimum guaranteed wage. Since a wide range of other measures had been taken to combat unemployment and delinquency, the system of civilian labour might eventually no longer be needed in the future. Pre-trial detention of six months extendable to 18 months was perhaps too long, and it was also recognized that owing to the slowness of the judicial process, it was not unusual for a lengthy period to elapse before a case came to trial. The Tunisian Government was endeavouring to solve the problem by setting up a new institute for the training of magistrates and by creating more courts. The term "detention" was only appropriate in the case of persons deprived of their liberty as a result of a court sentence. There were no other grounds for detention. Any citizen who was mentally ill and who represented a threat to public order or public safety could be interned in a psychiatric hospital, but only following an order issued by the Minister of Public Health. An appeal against such internment could be made by the person concerned or a relative to a joint medical and legal committee. A draft Mental Health Act had recently been introduced under which only hospitals and health institutions would be authorized to intern persons suffering from mental disorders.

520. The period of custody was fixed by law at four days, renewable once, with the possibility - as an exception - of a further two days. Under no circumstances could custody legally exceed 10 days, a period that was considered to be reasonable given various practical difficulties involved in making it shorter - such as the lack of judicial police officers competent to conduct inquiries. Exceptional cases where the period of custody had been longer were thoroughly investigated and sanctions had been imposed. A number of commissions were actively engaged in seeking the greatest possible harmonization of all Tunisian Codes with the provisions of the Covenant. Efforts were being made, for example, to eliminate shortcomings in respect of the practical possibility for a detained person to contact a lawyer and his family. The law of 26 November 1987 on custody and pre-trial detention allowed detained persons or members of their family to call for a medical examination during or at the end of the period of custody. Any refusal had to be the subject of a written statement countersigned by the detainee.

Right to a fair trial

521. With regard to that issue, members of the Committee asked, in view of the executive branch's discretionary powers in respect of the appointment, assignment and tenure of judges, how the independence and impartiality of the judiciary was guaranteed in Tunisia. They also wished to know whether there was any free legal aid and advisory scheme and, if so, how it operated. Additionally, observing that an appeal to a higher instance was not always possible in the case of sentences for criminal offences, it was asked whether measures were being adopted to eliminate

that deficiency, which appeared not to be in conformity with the provisions of article 14, pararaph 5, of the Covenant. With reference to Tunisian military courts, members asked whether decisions of a military court could be reviewed by the Court of Cassation; whether there was any discernible tendency to reduce the competence of the military courts; and how the competence of military or ordinary courts would be determined in cases involving a group of defendants including members of the armed forces.

522. In his reply, the representative of Tunisia recalled that the Higher Council of the Judiciary, which was composed of *ex officio* and elected members, had to endorse all proposals in respect of the appointment of judges, whose independence and impartiality were fully guaranteed by constitutional and other provisions. Legal aid was available in accordance with a decree of 1956 which provided for the assignment of lawyers to defend the interests of demonstrably needy persons. Free legal consultations were, however, not currently available in Tunisia. Subject to certain exceptions regarding administrative law, Tunisian legislation offered all the judicial guarantees, including the automatic reduction of sentences under certain conditions and the right of appeal. Military courts were long-established institutions, duly constituted and of a non-exceptional nature, functioning in accordance with the normal rules of law. Such courts dealt with the totality of any case involving military personnel. That included passing judgement with regard to any non-military co-defendants. It had not been deemed necessary to dismantle those courts, which were presided over by civilian judges, but the question would be kept under review.

Freedom of movement and expulsion of aliens

523. With reference to that issue, members of the Committee wished to know how often the issuance, renewal or extension of a passport had been restricted during the reporting period, pursuant to Act No. 75-40 of 14 May 1975 and whether the lodging of an appeal against an expulsion order issued by the Minister of the Interior had suspensive effects. Clarification was also requested on the conformity with article 12 of the Covenant of the restrictions on the issuance or the renewal of a passport in a case where an individual might injure the good reputation of Tunisia. Further information was requested about the 196 persons whose passports had been withdrawn and whose rights had been restored as a result of the intervention of the Tunisian League for Human Rights. Further details were also requested on the concept of expulsion as understood in Tunisian law, on the Minister of the Interior's possibility of delegating his authority in connection with the signing of expulsion orders, and on the right of Tunisian citizens to leave their country.

524. Answering the questions on restrictions on the issuance of passports, the representative of Tunisia explained that the cases that allowed limitations were defined very restrictively by the Act of 14 May 1975. Such limitations were applicable either at the request of the Office of the Attorney-General or when the person concerned was the subject of legal proceedings, or was wanted for a crime or offence or in order to serve a term of imprisonment. Other restrictions involved considerations of public order, security and injury to the good reputation of Tunisia abroad. The considerations of public order and security were related to the activities to combat the major international problems constituted by the drug trade, the abduction of individuals for the purposes of prostitution, serious crime and terrorism. The expression "good reputation" used in that context was outdated and no longer consistent with Tunisia's current goals. Nevertheless, in the case

of Tunisians perpetrating crimes or offences abroad, for example, offences of procuring committed by nationals in third countries, the restriction on the issuance or renewal of a passport on the ground that an individual might injure the good reputation of the country was still fully justified. All limitations on the issuance of passports were applied with the utmost care and the committees entrusted with the dossiers were subject to governmental supervision. Further, anyone incurring a limitation which he considered to be unlawful or irregular could file an appeal on the grounds of abuse of authority to the Adminstrative Tribunal. Of the 296 cases in which persons had requested the intervention of the Tunisian League for Human Rights, almost 200 had been resolved.

525. Answering other questions, the representative of Tunisia explained that under the Act of 8 March 1968, only the Minister of the Interior - no delegation of authority being possible in that area - could issue an expulsion order against any alien whose presence in Tunisian territory constituted an immediate threat to public order. A stay of execution might be granted for a limited period for humanitarian or material reasons and was issued within 24 hours. The expulsion order could be appealed. In any case, there had been no instance of expulsion since 1987. He explained that should an alien be unable to leave Tunisia, he would be granted a stay of execution for humanitarian reasons and made subject to a restricted residence order until he could leave the country.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

526. The members of the Committee asked: what were the prescribed procedures for official registration or for obtaining necessary authorizations by religions or religious sects other than Islam, Catholicism or Protestantism and the Jewish faith; how many such smaller religious sects were actually established in Tunisia; and whether any local periodicals had been seized or any foreign periodicals banned by the Minister of the Interior during the reporting period. They also asked for information concerning the activities of the Higher Communication Council since its establishment in January 1989. It was also asked: whether the founding of periodicals was subject to mere notification or whether official permission had to be granted by the Minister of the Interior; what were the grounds on which this permission could, if necessary, be refused; and whether it was possible to appeal against a decision of the Ministry of the Interior refusing permission for publication or a decision by a court of first instance banning publication of a periodical. Clarification was requested concerning libel by the press and, in particular, the means of defence available and the right of reply provided for in the Press Code. It was asked whether there was a growing tendency to offer less protection to political and other personalities against the danger of libel or whether instead there continued to be a relatively rigid system of protection for public figures. The question was also raised of the extent to which objectivity was guaranteed on radio and television, whether there was an agency that regulated radio and television broadcasting, whether there were regulations guaranteeing the right of everyone to seek, receive and impart information and ideas of all kinds, and whether journalists were represented on the board of directors or took part in the appointment of the editor. Information was requested about restrictions on the freedom of expression and their conformity with article 19 of the Covenant.

527. In reply to the questions asked, the representative of the State party noted that the exercise of religious freedom was a right embodied in the Constitution and fully guaranteed in practice. The Press Code had undergone fundamental changes. For example, the Public Prosecutor could no longer ban newspapers or periodicals *sine die* simply at the request of the Ministry of the Interior. The Ministry of the Interior could now seize only a single issue of the publication in question, and then only in grave circumstances. The Ministry of the Interior had taken such steps on three occasions. The measures had been of a special nature and had been prompted by serious breaches of the law and disturbances of public order, to the exclusion of any other consideration. The Higher Communication Council had been established to devise measures designed to guarantee full freedom of expression, information and communication, facilitate the development of legislation in that field, and develop and improve the quality of the technical infrastructure of communications. It was also engaged in ensuring observance of the principle of pluralism and of the right of various political tendencies to express their views on radio and television. With regard to defamation in respect of the press, he cited a specific example demonstrating that, while the Press Code contained provisions which could be described as archaic, the interpretation and application of the legislation remained flexible. The Press Code also recognized the right of persons who considered themselves to have been injured by a press article to have a correction inserted in the organ which published the original article.

528. Replying to other questions, he said that the authorization issued by the Ministry of the Interior for the founding and publication of a newspaper, periodical or journal was an administrative decision, and such authorizations were granted only to applicants who fulfilled all the necessary conditions. With regard to the freedom of conscience of journalists, there was no law in Tunisia prohibiting journalists from participating in the management of the company with which they were associated.

Freedom of assembly and association

529. The members of the Committee asked: whether the three new political parties formed since the adoption of Act No. 88-32 of 2 May 1988 had participated in the parliamentary and presidential elections of 2 April 1989 and, if so, how many votes they had received; what was the current political composition of the Tunisian Parliament; and how many applications for authorizations concerning the operation of political parties had been rejected, and for what reasons, under the Organic Law of 2 May 1988.

530. In reply, the representative of the State party said that the three parties formed following the adoption of the Act of 2 May 1988, bringing the number of political parties in Tunisia to seven, had received between 0.15 per cent and 0.37 per cent of the vote in the recent parliamentary and presidential elections. Victory in the legislative elections had gone to the candidates of the Rassemblement Constitutionnel Démocratique, which had won all 141 seats in the Chamber of Deputies. Under the Organic Law of 1988, any organization wishing to set itself up as a political party must meet a number of conditions, the principal ones concerning the observance and protection of human rights and the attainments of the nation, the republican system, its basic precepts, the principle of the sovereignty of the people and the principles governing personal status. If an application to form a political party was rejected, it was usually because it had not been presented in the correct form. However, one application had recently been

rejected on the grounds that some founders of the group had been sentenced to unsuspended prison terms of three years. Any decision to reject such an application was open to appeal before a special chamber of the Administrative Tribunal.

Protection of the family and children

531. Members of the Committee asked for further information: on the links between the Higher Council for Child Affairs and the Ministry of Childhood and Youth; on the activities undertaken by those two bodies since their formation; and on the implementation of articles 53 and 55 of the Labour Code concerning the employment of minors.

532. The representative of the State party replied that the Higher Council for Child Affairs was a specialized interdepartmental advisory body which assisted the Minister of Childhood and Youth - who presided over it - in formulating government policy regarding childhood. The Inspectorate-General of Labour, which was responsible for monitoring implementation of the provisions of the Labour Code, including those of articles 53 and 55, was a body of specialized and sworn civil servants authorized to report violations of the Labour Code to the Public Prosecutor.

Right to participate in public life

533. Members of the Committee asked whether the disfranchisement of persons sentenced to an unsuspended term of imprisonment exceeding three months or to a suspended term exceeding six months was for life or limited to a specified period. It was also asked whether there had been cases of persons of the Islamic faith being dismissed from the civil service.

534. Replying to the questions asked, the representative of the State party said that disfranchisement was not for life. Under articles 367 and 370 of the Code of Penal Procedure, rehabilitation could be granted after a period of three years following completion of the sentence, its prescription, or its reduction in the case of criminal penalties, and after one year following completion of sentence for other offences, subject to good behaviour during the period of detention. Furthermore, there was a very strictly applied rule in the Tunisian civil service, that no indication of the religion of a civil servant could appear in his file. No civil servant could be dismissed without a valid reason and, in any event, the gravity of the offence must be assessed by the Disciplinary Board. It was thus impossible to determine whether any of the many applications for repeal of administrative decisions were made by followers of Islam.

General observations

535. The members of the Committee welcomed the excellent report of Tunisia and the highly constructive nature of the dialogue between the Tunisian delegation and the Committee, which had provided the Committee with a clearer picture of the rapid changes which had taken place in Tunisia since 1987. The release of political prisoners, the creation of new institutions, the introduction of political pluralism and the efforts made to bring the whole legislative system more into line with the provisions of the Covenant constituted irrefutable progress in the protection of human rights and augured well for the future. Some members of the Committee, however, said that their misgivings had not been entirely allayed,

particularly with regard to the length of time for which and the conditions under which persons could be held in custody and the continued existence of a number of measures which discriminated against women, particularly those concerning inheritance. Concerns were also expressed about compulsory civilian labour being in conflict with the provisions of article 8 of the Covenant; cases of torture or ill-treatment in police stations; the death penalty which, while actually never imposed, was still provided for in too many cases; the legislation on passports and a number of provisions of the Press Code concerning defamation and the banning of periodicals; the lack of effective and prompt remedies; and certain restrictions on the ability to form political parties.

536. The representative of the State party said that the dialogue with the Committee had provided his delegation with a better understanding of the shortcomings of the human rights situation in Tunisia and assured the Committee that the comments made would be passed on both to the Government and to the various commissions responsible for reviewing legislation. The Committee would then be kept informed of the reforms undertaken, as they were adopted.

537. In concluding the consideration of the third periodic report of Tunisia, the Chairman thanked the Tunisian delegation for its spirit of co-operation. The substantial progress made since the beginning of restructuring in Tunisia was evidence of the Government's political will to pursue that course and to bring to the human rights situation such improvements as were still needed in a number of areas.

Zaire

538. The Committee considered the second periodic report of Zaire (CCPR/C/57/Add.1), together with additional information submitted subsequent to the consideration of the initial report (CCPR/C/4/Add.11), at its 993rd to 995th meetings, held on 17 and 18 July 1990 (CCPR/C/SR.993-SR.995).

539. The report was introduced by the representative of the State party, who explained that in view of the short time which had elapsed since the earlier submissions of his Government in 1987 and 1988, the second periodic report confined itself to providing information about recent changes in national legislation and about difficulties faced and progress achieved in protecting and promoting citizens' rights. Some major political changes had taken place in Zaire recently involving, in particular, the abandonment of the one-party system and the restoration of the multi-party system. This had been announced by the President in April 1990, when he indicated that three parties would henceforth participate in Zaire's political life. A transitional Government would be responsible for making the necessary institutional arrangements and a new Constitution would be drafted by an *ad hoc* commission. The current Constitution which had now been revised to reflect the new political pluralism was to remain in force until 30 April 1991. The holding of primary, legislative, and presidential elections in 1991 was also announced. In addition, the Zairian Family Code, which had come into force on 1 August 1988, introduced two important innovations: the right of a widow to succeed her deceased husband and the abolition of the concept of the natural child.

Constitutional and legal framework within which the Covenant is implemented

540. With reference to that issue, members of the Committee sought clarification as to the status of the Covenant within the Zairian legal system. They asked, in particular, whether the Covenant could be directly invoked in court and, if so, whether there had been any instances where that had occurred and whether contradictions between domestic legislation and the Covenant had been resolved. They also wished to know why the number of authorized political parties had been limited to three under the new system; what the powers and functions of State Commissioners (Ministers) were, particularly those of the State Commissioner of the Ministry of Rights and Freedoms of the Citizen in respect of appeals from Supreme Court decisions; and what measures had been taken to promote greater public awareness of the provisions of the Covenant and the Optional Protocol, particularly through the mass media and educational programmes. With regard to the latter instrument, members of the Committee wished to know what follow-up had been given by the Zairian authorities to the Committee's views in respect of communications Nos. 138/1983, 241/1987 and 242/1987. Additionally, they requested comments concerning allegations that the authors of communications to the Committee under the Optional Protocol had been subjected to legal action in Zaire and that Zairian citizens had been subjected to torture and ill-treatment merely for being found in possession of documents such as the Covenant.

541. Further, members of the Committee observed that the second periodic report of Zaire did not conform sufficiently to the Committee's guidelines regarding the form and contents of reports, noting in particular that information responding to the Committee's earlier questions as well as about the difficulties experienced and progress achieved in implementing the Covenant was far too brief. They also wished to know whether the legislature in Zaire was required to consult the Supreme Court before ratifying a treaty, or merely empowered to do so if it had doubts as to the constitutionality of the treaty; whether the Constitution had had to be amended as a result of the ratification of the Covenant; what were the membership and competence of the Judicial Council; what was the meaning and purpose of the "open days" organized under the chairmanship of the President of the Council; what the effect of a ruling of the Council was on court cases; and what the role was of State security courts in dispensing justice. Noting that the recent revisions of the Constitution did not include any changes in respect of civil and political rights, members also asked whether the Zairian Government considered that such rights had been adequately protected under the old Constitution and whether Zaire's adherence to the African Charter on Human and Peoples' Rights had had any influence on how the Constitution was interpreted in the Zairian courts.

542. Concerning the referendum recently held in Zaire to establish political pluralism, members asked whether that exercise was not, in effect, simply a plebiscite organized by the Government in support of the ruling party, which was the only one capable of organizing a political campaign and putting forward political ideas. In that connection, they wished to know specifically what questions had been put in the referendum; how it had been conducted; whether prior consultations between political groupings had been allowed; on what basis the three parties chosen had been selected from among many others, and what the platforms were of the three proposed parties; and why the people of Zaire could not decide themselves how many political parties they wished to support.

543. With regard to the competence of the Ministry of Rights and Freedoms of the Citizens, members wished to know whether it had a consultative or an investigative role; what part the State Commissioner of the Ministry had played in the revision of the Zairian Constitution; and what role the Commissioner played in implementing the provisions of the Covenant. Concerning the powers of the Minister of Justice in respect of Supreme Court decisions, it was asked whether appeals to the Minister were resorted to systematically or only as a last resort and what steps the Minister of Justice could take in cases of wrongful conviction.

544. In his reply, the representative of the State party said that article 59 of the revised Constitution of 5 July 1990 provided that a treaty ratified by Zaire took precedence over its national law in the event of any conflict between them. The same article provided that if the Supreme Court of Justice, upon consultation by the President of the Republic or the National Assembly declared that a treaty before the legislature contained an article which conflicted with the Constitution, it should be ratified only after the Constitution had been appropriately amended. Difficulties in implementing the International Covenants on Human Rights in Zaire were mainly due to the lack of means and resources of the country. Notwithstanding those practical difficulties, the International Covenant on Civil and Political Rights enjoyed high status with respect to the Zairian Constitution.

545. The Judicial Council was an institution encompassing the totality of the country's courts and tribunals, both civil and military, which functioned independently but which were supervised and co-ordinated by the President of the Council. The "open days" constituted an activity of the President of the Judicial Council in response to popular protests at the extremely protracted nature of judicial proceedings. Military courts predominate over civil courts and only handled cases involving members of the armed forces. Administratively, the two structures were capped by the Judicial Council which was now more currently referred to as the Ministry of Justice. The revisions to the Constitution of 5 July 1990 were aimed primarily at political changes. No legal proceedings had ever been taken in Zaire against the authors of communications under the Optional Protocol.

546. With regard to political pluralism, the representative explained that more than 40 active political groups had been created since the end of April 1990. All would campaign in any process of consultation and, in 1991, those groups would present themselves before the people who would determine which three parties would be officially retained in the country's basic political structure. The limitation to three political parties had been chosen to avoid the repetition of the tragic experience of the years 1960-1965 when unrestricted multipartism caused serious difficulties and involved the death of more than half a million people. The three-party system should allow for the expression of left-wing, right-wing and centrist opinions.

547. The Supreme Court of Justice represented the final court of appeal which could not be overruled even by the Minister for Rights and Freedoms of the Citizen. If the Minister considered that a Supreme Court decision contained a misjudgement, the only course of action open to him was to consult with the Minister of Justice to see whether the injustice could, in some way, be repaired. One such case was currently under consideration. The Ministry of Rights and Freedoms of the Citizen had three tasks: informing people, often illiterate, of their rights; educating citizens in the exercise of their rights; and supervising the application of the

international instruments to which Zaire was a party. The Ministry had published a booklet which informed citizens about their rights in relation to security and the courts and a second volume would shortly be published which would deal with the rights of citizens in relation to the administrative authorities and would contain information about the provisions of the Covenant and the Optional Protocol. It also sponsored educational activities and weekly radio programmes on the rights and freedoms of the citizen which were broadcast in French and in Zaire's four main vernacular languages. The Minister of Rights and Freedoms of the Citizen had had no distinct role in the recent process of constitutional revision.

Self-determination

548. With regard to that issue, members of the Committee asked what Zaire's position was with regard to the struggle for self-determination of the South African and Palestinian people and whether the Zairian authorities had taken any concrete measures against the *apartheid* régime of South Africa. It was asked, in particular, what factors were involved in Zaire's opposition to the application of sanctions to South Africa.

549. In his reply, the representative of Zaire said that his Government had set up a national committee against *apartheid* to promote and co-ordinate all activities relating to the anti-*apartheid* struggle. The Government was supporting both sanctions and dialogue in respect of the South African régime. He also recalled that since 1975 the Government had authorized the Palestine Liberation Organization to have an office in Kinshasa and that his Government's position on the issue of Palestine was that the Palestinians should have their homeland and that there should be secure frontiers for all States in the region.

State of emergency

550. Regarding that issue, members of the Committee wished to know which provisions of law, if any, governed the imposition of a state of siege or emergency pursuant to article 52 of the Zairian Constitution and, in particular, whether in accordance with article 4, paragraph 2, of the Covenant the right to life was included among the fundamental rights that could not be derogated from.

551. The representative replied that after independence, Zaire had gone through a difficult period during which texts had been drafted relating to the declaration of a state of emergency. However, those texts had never been applied and the question of the right to life had therefore never arisen in that context.

Non-discrimination and equality of sexes

552. With reference to that issue, members of the Committee wished to know what measures were being considered in Zaire to eliminate discrimination stemming from certain provisions of the Civil, Family and Penal Codes in respect of the equality of the sexes; whether any additional measures were being contemplated to protect the right of women to equal opportunity to employment and to equal treatment in respect of remuneration; what were the number and proportion of women in Parliament and in other high public offices, such as the magistrature, the liberal professions, the senior ranks of the civil service and in private business; and in which respects, other than in the exercise of political rights, the rights of aliens were restricted as compared with those of citizens. Members also observed that legal provisions such as those which allowed a husband to oppose his wife's going to work appeared to be in contradiction with the Covenant.

553. In his reply, the representative pointed out that the legal provisions which allowed a husband to oppose his wife's employment had never been tested in court. In case of opposition, the wife generally preferred to stop working. The best approach to the question was perhaps to educate women to claim their rights through Parliament. However, the Government of Zaire thought it better to move cautiously since, although the provisions concerned could be suppressed, in practice the attitude of the husband would still exist and would still need to be changed. At present there were 10 women members of Parliament and it was up to them to take up the fight. In general, however, women in Zaire enjoyed all the rights under the Covenant and were represented in the Parliament, the Government, the public service and other professions. Aliens enjoyed the same rights as Zairian citizens other than the fact that they were not eligible to vote and could not have access to mining areas.

Right to life

554. With reference to that issue, members of the Committee wished to receive detailed information concerning the recent events in Lubumbashi indicating, in particular, whether any punitive measures had been taken against the regional authorities who allegedly were responsible for the killings that had occurred there. They also wished to know what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; on how many occasions over the past five years had the courts in Zaire imposed the death penalty and how often such sentences had been carried out; how long did a person under sentence of death have to wait to know whether he was to be executed or whether his sentence was to be commuted and, in that regard, what was the precise situation of persons sentenced to death who had been tried two years earlier and had still not been executed and what progress had been made in reducing infant mortality in the country in the period under review.

555. The members of the Committee expressed their deep concern to the representatives of the State party, in particular regarding the events at Lubumbashi. The incidents which had taken place in May 1990 had involved a number of serious abuses by public officials, which had been confirmed by eye-witnesses including students, college lecturers, members of the People's Movement for the Revolution and members of the clergy. Those same witnesses had also referred to the disappearance of 23 students, and further information was requested on the matter. The Committee also asked what the authorities intended to do to compensate for the wrong done to the victims and their families.

556. In his reply, the representative of Zaire described the situation in which the authorities had been confronted with violent revolts in the university and provided details on the serious incidents which had occurred at Lubumbashi on the night of 10 to 11 May and in which some 10 persons had been seriously injured, one of whom had subsequently died. A parliamentary commission of inquiry had been set up to determine responsibility, and all the civilian and military authorities in the Shaba region which had been involved in the affair had been relieved of their duties and brought before the courts. The case was being investigated by the Public Prosecutor of the Republic of Kinshasa and the public trial would be held shortly. No reports had thus far been received of student disappearances at Lubumbashi. In due course, any victims would be able to institute civil actions in order to claim damages. The list of all the authorities involved and recognized as responsible in the affair was at the Committee's disposal.

557. He then gave information on the regulations regarding the use of firearms by the police and security forces. Firearms could be used only at the request of the competent authority, and any violation of that regulation was punishable under the Criminal and Military Codes. Indeed, such punishments were not unusual. He also referred to the death sentences imposed, in accordance with the Criminal Code, on individuals tried for armed robbery and confirmed that the sentences had not been carried out. He also gave information on the procedures for appeal against death sentences and pointed out that the law did not establish any time-limit for the final decision. With regard to infant mortality, he said that a primary health care programme had been instituted by the Government of Zaire and the infant mortality rate had fallen significantly.

Treatment of prisoners and other detainees

558. Regarding that issue, members of the Committee noted that information had been received concerning many cases of police brutality and corruption of public officials and wished to know what legal or administrative procedures guaranteed prompt and impartial investigations of alleged violations of article 7 of the Covenant; whether there had been any such allegations during the period under review and, if so, whether they had been investigated and with what results; what arrangements existed for the supervision and inspection, on a systematic basis, of places of detention in Kinshasa as well as in the provinces; whether the Zairian Penal Code provided for banishment as a punishment for certain offences; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with; and whether these provisions had been made known to the concerned police, armed forces and prison personnel as well as, in general, to all persons responsible for holding interrogations. Reference was made, in this connection, to information concerning many cases of police brutality and corruption of public officials. They also asked for clarification on the purpose of Legislative Ordinance No. 89-049 bis of 23 September 1989. In this connection, they wished to know whether any proceedings had been instituted by the Ministry of Rights and Freedoms of the Citizen pursuant to that law.

559. Questions were asked, in particular, regarding the announcement that the National Security Council's detention centres in Zaire were to be closed and taken over by the police. Members asked what were the regulations governing the activities and operation of such centres; who would be authorized to inspect them; whether the Ministry of Rights and Freedoms of the Citizen would retain responsibility for all the centres placed under police authority; how prison inspections were actually carried out; under what conditions detention in custody and pre-trial detention could be extended; and under what conditions prisoners were held in military prisons.

560. In his reply, the representative of the State party referred to a number of laws governing deprivation of freedom and, in particular, to articles 76 and 80 of the Decree-Law concerning the duties of the judicial police which guaranteed the right of persons held in custody to have themselves examined by a doctor and to have the detention premises inspected in order to ascertain the conditions of detention. Although abuses had indeed been committed by police officers in detention centres, the Government of Zaire was endeavouring to put an end to them by, among other things, introducing measures for the proper training and education of police officers.

561. He went on to say that, under Decree-Law No. 89-049 bis of 23 September 1989, the Ministry of Rights and Freedoms of the Citizen had been empowered to bring automatically before the courts any case of torture brought to its attention. However, as the Ministry of Justice had considered that the existing guarantees were adequate to enable persons regarding themselves as victims of torture to assert their rights, the Decree-Law had been revoked in 1990. Nevertheless, the Ministry of Rights and Freedoms of the Citizen intended to resubmit its draft.

562. The representative of the State party also stated that banishment, or "relegation" as it was known in Zaire, was an administrative measure which could be taken by the Ministry of the Interior. However, as part of the current political reforms in Zaire, a draft Decree-Law had been prepared by the Ministry of Rights and Freedoms of the Citizen with a view to abolishing the measure. He pointed out that all the measures for the abolition of banishment and administrative internment announced by the National Security Council on 22 May 1990 would be embodied in legislation.

563. He also referred to the provisions under which the Public Prosecutor was obliged to inspect all places of detention. The Ministry of Rights and Freedoms of the Citizen was responsible for inspecting places of detention at least once a month, or as often as it deemed necessary. Families who did not know where one of their members was being held in detention could apply to the Ministry, which would order an investigation. He said that the United Nations Standard Minimum Rules for the Treatment of Prisoners were applied in Zaire and, in that connection, provided information on the legal training given to members of the security forces, under the supervision of the Public Prosecutor.

Liberty and security of the person

564. With regard to that issue, members of the Committee referred to problems relating to "forced labour", discussed in paragraphs 49 to 53 of the supplementary report of Zaire, and requested information concerning corrective measures that might have been adopted by the Departments of Justice, Regional Administration and Agriculture. They also asked whether there was any maximum limit on the length of pre-trial detention resulting from renewal orders by the examining judge and, if there were no such prescribed limits, what the actual practice of the courts was and how it was ensured that pre-trial detention was not extended indefinitely; how soon after arrest a person could contact a lawyer; and how quickly after arrest a person's family was informed.

565. In his reply, the representative of Zaire said that there was no forced labour in his country. Under the law, the urban unemployed were encouraged to look for work in rural areas and provision was made for work in the public interest in the event of natural disasters, for example. In addition, the legislation channelling young people into the study of certain subjects at university had been repealed by a presidential order in 1987. He then pointed out that a police officer had 48 hours to decide whether to release a detainee or to bring him before the Public Prosecutor. That regulation also applied in detention centres under the responsibility of the security services. The fact that the 48-hour time-limit was sometimes exceeded was due to communication problems in the areas furthest from the capital. The examining magistrate had five days in which to decide what was to be done with a prisoner, and the judge 25 days, which could be extended under certain circumstances. The prisoner could contact a lawyer immediately after the custody period. The police must immediately inform the prisoner's family of his arrest.

Right to a fair trial

566. With regard to that issue, members of the Committee wished to know what progress had been achieved in Zaire since the consideration of the initial report in the recruitment and training of judges, particularly with respect to their independence from the executive; whether there was in Zaire a legal aid or advisory scheme and, if so, how it operated; what was the composition and jurisdiction of the Court of State Security; and whether any cases had been considered by that court since the consideration of the initial report.

567. In his reply, the representative of Zaire provided information on the training of judges in Zaire and said that free legal aid was available to prisoners lacking the means to pay for such services. The Judicial Council co-ordinated the work of the civil and military courts and tribunals. Judges were independent both during their training and in the performance of their duties. Their independence was guaranteed by article 101 of the Constitution and by the Act on the status of the judiciary. They were not removable. However, there existed in Zaire "itinerant" courts, and judges were called on to travel to various regions, without their independence being in any way compromised. The judges selected by the Ministry of Justice were appointed by presidential order. The Higher Council of the Judiciary was the only body authorized to impose sanctions on them. The Court of State Security was an ordinary court with regard to both composition and procedure.

Freedom of movement and expulsion of aliens

568. Regarding that issue, members of the Committee requested additional information about the application of article 12, paragraph 1, of the Covenant, particularly in respect of restrictions on freedom of movement and on the settlement of aliens. They also asked what special provisions and regulations, if any, pertained to the expulsion of aliens other than those holding refugee status. In addition, information was requested on the situation of refugees from Angola.

569. In his reply, the representative of the State party confirmed that, in Zaire, aliens enjoyed full rights, with the exception of political rights, and that the freedom of movement of aliens was limited only in mining areas. Zairian law nevertheless was applicable to aliens presenting a threat to the security of the State. With regard to Angolan refugees, he said that some of them had been more or less assimilated into the Zairian population and that there were no refugee camps as such in the country. Furthermore, in 1989, with the assistance of the United Nations High Commissioner for Refugees, a large number of Angolans had been voluntarily repatriated.

Freedom of expression

570. With reference to this issue, members of the Committee wished to know whether the recently announced liberalization of the Zairian political system had had any effect on laws and regulations relating to freedom of expression, particularly with regard to easing censorship. Information was requested, in particular, on the status of journalists and on pressures which might be brought to bear by the authorities to limit their freedom, since radio and television were State monopolies. In that connection, members of the Committee wished to know how the Government of Zaire intended to guarantee the freedom of expression of journalists; whether any journalists were being held for political offences; whether the press was subject to censorship and of what kind; whether the political reforms in Zaire

provided for access to the media and criticism of Government policy; what were the regulations to be observed in holding a peaceful demonstration; and whether there were cases of publications having been seized.

571. In his reply, the representative of the State party said that journalists had indeed been arrested for criticizing the Government, but that had been prior to 24 April 1990. With the announcement of the abolition of the single party and the political reforms, a growing number of newspapers had recently been published in Zaire. Furthermore, television and radio could only be operated by the State, since private individuals did not have the means to set up that type of enterprise. Censorship existed in Zaire to protect public morals and traditional values, and also for political reasons. However, the situation was changing. In addition, the right of peaceful assembly was recognized in Zaire, but in order to hold a peaceful assembly, an authorization had to be requested from the authorities for security reasons.

Freedom of association

572. With regard to that issue, members of the Committee requested additional information concerning the recently announced introduction of multipartism in Zaire and asked how this would affect the organization and powers of the People's Movement for the Revolution. Members of the Committee also wished to know what were the criteria to be used in placing the three new parties in Zaire in the national political spectrum; whether the formation of associations was subject to compulsory registration; what was the procedure to be followed; how associations devoted to the promotion of human rights would be treated; whether restrictions on the right to form associations existed with regard to aliens; and what were the practical consequences of the decisions taken in May 1990 with regard to the freedom of assembly and association.

573. In his reply, the representative said that pursuant to an Act of 1965, anyone in Zaire could set up an association, which would be free to operate under its own system of management pending an order by the President of the Republic granting it civil personality. At present, the Zairian National Human Rights League was awaiting formal recognition by the President. Political assemblies under the new system could be held in the normal way subject to the regulations in force under which prior authorization was required. The organization of political parties was addressed in a bill that was before Parliament. The only criteria applicable to the three new parties would be the will of the people, who would choose between the various alternatives offered.

Protection of the family and children

574. In this regard, members of the Committee asked for information on the protection afforded under Zairian law to children working before reaching the authorized age, and for clarifications on the various conceptions of the family in Zaire, on a number of legal provisions governing marriage and on the exclusion of the concept of "natural child" from the Zairian Family Code.

575. In his reply, the representative of Zaire explained that the whole concept of the natural child had been rejected by the Zairian legislature on the basis of the principle that a man who fathered a child, whether in or out of wedlock, should be made legally responsible for it. Both the concepts of "nuclear family" and

"extended family" had been taken into account in drafting Zairian legislation. Schooling was obligatory up to 14 years of age but some children, particularly girls, dropped out.

Right to participate in the conduct of public affairs

576. With reference to that issue, members of the Committee asked what the consequences were of the reform of the Zairian Constitution in so far as the participation of citizens in the conduct of public affairs was concerned.

577. In his reply, the representative of Zaire said that under the new political system of the country citizens would enjoy much greater freedom than under the one-party system.

General observations

578. Members of the Committee expressed appreciation to the representative of the State party for providing the Committee with substantive information on the implementation of the provisions of the Covenant in his country. By doing so, he had demonstrated the willingness of the Zairian Government to co-operate with the Committee and had made up, in part, for the lack of information in the report. The dialogue had been fruitful even though not all questions asked had received a reply.

579. With reference to the recent political evolution in Zaire, members of the Committee welcomed the constitutional reform abolishing the one-party system in the country and the other political changes. Those reforms constituted a step forward in the democratic process and in the promotion of human rights. At the same time, members of the Committee felt that they had not been fully enlightened with regard to the implementation of the Covenant in Zaire's legal system or concerning its real influence on the enjoyment of civil and political rights at the national level. A series of features in contradiction with various provisions of the Covenant appeared to exist in the country and raised some major concerns.

580. In the foregoing connection, members of the Committee observed that, despite the reforms that had been introduced in Zaire, it was clear that further improvements would be needed if certain forms of discrimination, notably against married women, were to be eliminated. In addition, measures were needed to abrogate the decree on banishment; to accelerate the procedure for taking final decisions on death penalties; to strengthen judicial controls and rules concerning conditions of custody, pre-trial detention and the treatment of detainees; to reinforce the independence of the judiciary; and to prevent brutality and abuses by the police and security forces in flagrant violation of the law. In the latter regard, members stressed that the adoption of positive measures was all the more necessary if a repetition of such serious events as those that occurred in Lubumbashi in May 1990 was to be prevented. Steps would also need to be taken to encourage freedom of the press; free access to the media and to generally guarantee freedom of expression. The transition from a single-party to a three-party system should be considered only as a first step towards the institution of genuine political pluralism.

581. Members of the Committee expressed concern at the continuing absence of a reply by the Zairian authorities in connection with communications submitted by Zairian citizens under the Optional Protocol. It was vital that Zaire should co-operate with the Committee by supplying the information requested and by

respecting the Committee's findings. They also stressed that in no case should the exercise by a Zairian citizen of his right to address a communication to the Committee expose him to reprisals.

582. The representative of the State party said that Zaire would take account of the comments made, with a view to complying with its obligations under the Covenant. He assured the Committee that all those implicated in the Lubumbashi affair would have to answer to justice and that in spite of material difficulties and constraints, human rights were of the greatest concern to the people of Zaire. Regarding the communications submitted by Zairian citizens under the Optional Protocol, a reply had been sent to the Commission on Human Rights and not to the Committee. If the interested parties thought that they had suffered injury, they were entitled to institute proceedings before the courts to obtain redress.

583. In concluding the consideration of the second periodic report of Zaire, the Chairman again thanked the Zairian representatives for their participation in the dialogue which had been constructive and fruitful and expressed the hope that the dialogue would continue on the occasion of the submission of Zaire's next periodic report.

IV. GENERAL COMMENTS OF THE COMMITTEE

Work on general comments

584. The Committee began discussion of a general comment on non-discrimination at its thirty-sixth session on the basis of an initial draft prepared by its working group. It considered that general comment at its 901st, 903rd, 914th, 939th and 948th meetings, during its thirty-sixth and thirty-seventh sessions, on the basis of successive drafts revised by its working group in the light of the comments and proposals advanced by members. The Committee adopted its general comment on non-discrimination at the 948th meeting, held on 9 November 1989 (see annex VI A). Pursuant to the request of the Economic and Social Council, the Committee transmitted the general comment to the Council at its first regular session in 1990.

585. At its thirty-eighth and thirty-ninth sessions, the Committee considered drafts of a general comment on article 23 of the Covenant submitted to it by its pre-sessional working groups. The drafts were revised by the Committee at its 956th, 973rd, 974th, 988th and 997th meetings and the final text of the general comment was adopted at its 1002nd meeting, held on 24 July 1990 (see annex VI B).

586. At its thirty-ninth session, the Committee confirmed its decision to update its general comments on articles 7 and 10. In addition, at its 1002nd meeting, it decided to start preparatory work on general comments on articles 18, 25 and 27.

V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

587. Under the Optional Protocol to the International Covenant on Civil and Political Rights, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit written communications to the Human Rights Committee for consideration. Of the 92 States that have ratified or acceded to the Covenant, 50 have accepted the Committee's competence to deal with individual complaints by becoming parties to the Optional Protocol (see annex I, sect. C). Since the Committee's last report to the General Assembly, five States have ratified or acceded to the Optional Protocol: Algeria, Ireland, the Philippines, the Republic of Korea and Somalia. No communication can be examined by the Committee if it concerns a State party to the Covenant that is not also party to the Optional Protocol.

A. Progress of work

588. The Committee started its work under the Optional Protocol at its second session in 1977. Since then, 418 communications concerning 31 States parties have been registered for consideration by the Committee, including 47 placed before it at its thirty-seventh to thirty-ninth sessions, covered by the present report.

589. The status of the 418 communications registered for consideration by the Human Rights Committee so far is as follows:

(a) Concluded by views under article 5, paragraph 4, of the Optional Protocol: 110;

(b) Declared inadmissible: 108;

(c) Discontinued or withdrawn: 64;

(d) Declared admissible but not yet concluded: 33;

(e) Pending at the pre-admissibility stage: 103.

590. In addition, the secretariat of the Committee has several hundred communications on file, in respect of which the authors have been advised that further information would be needed before their communications can be registered for consideration by the Committee. The authors of some 100 further communications have been informed that the Committee does not intend to consider their cases, as they fall clearly outside the scope of the Covenant or appear to be unfounded or frivolous.

591. A volume containing selected decisions under the Optional Protocol from the second to the sixteenth sessions (July 1982) was published in English in 1985. The French and Spanish versions were issued in 1988. A volume containing selected decisions from the seventeenth to the thirty-second sessions was published in English in 1990. The French and Spanish versions are to be issued before the end of the year.

592. During the thirty-seventh to the thirty-ninth sessions, the Committee concluded consideration of 14 cases by adopting its views thereon. These are cases Nos. 167/1984 (Bernard Ominayak and the Lubicon Lake Band v. Canada), 181/1984 (A. and H. Sanjuán Arévalo v. Colombia), 193/1985 (Pierre Giry v. France), 195/1985 (W. Delgado Páez v. Colombia), 208/1986 (K. Singh Bhinder v. Canada), 215/1986 (G. A. van Meurs v. the Netherlands), 219/1986 (Dominique Guesdon v. France), 232/1987 (Daniel Pinto v. Trinidad and Tobago), 241 and 242/1987 (F. Birindwa ci Birhashwirwa and E. Tshisekedi wa Mulumba v. Zaire), 250/1987 (Carlton Reid v. Jamaica), 291/1988 (Mario I. Torres v. Finland), 295/1988 (Aapo Järvinen v. Finland), 305/1988 (Hugo van Alphen v. the Netherlands).

593. The Committee also concluded consideration of 23 cases by declaring them inadmissible. These are cases Nos. 220/1987 (T. K. v. France), 222/1987 (M. K. v. France), 244/1987 (A. Z. v. Colombia), 246/1987 (N. A. J. v. Jamaica), 251/1987 (A. A. v. Jamaica), 258/1987 (L. R. and T. W. v. Jamaica), 259/1987 (D. B. v. Jamaica), 260/1987 (C. B. v. Jamaica), 268/1987 (M. G. B. and S. P. v. Trinidad and Tobago), 275/1988 (S. E. v. Argentina), 278/1988 (N. C. v. Jamaica), 281/1988 (C. G. v. Jamaica), 290/1988 (A. W. v. Jamaica), 297/1988 (H. A. E. d. J. v. the Netherlands), 306/1988 (J. G. v. the Netherlands), 318/1988 (E. P. et al. v. Colombia), 329/1988 (D. F. v. Jamaica), 343, 344 and 345/1988 (R. A. V. N. et al. v. Argentina), 369/1989 (G. S. v. Jamaica), 378/1989 (E. E. v. Italy), 379/1989 (C. W. v. Finland).

594. The texts of the views adopted on the 14 cases, as well as of the decisions on the 23 cases declared inadmissible, are reproduced in annexes IX and X. Consideration of five cases was discontinued. Procedural decisions were adopted in a number of pending cases (under rules 86 and 91 of the Committee's rules of procedure or under article 4 of the Optional Protocol). Secretariat action was requested on other pending cases.

B. Growth of the Committee's case-load under the Optional Protocol

595. As the Committee has already stated in its last annual report, increased number of States parties to the Optional Protocol and increased public awareness of the Committee's work under the Optional Protocol have also led to a substantial growth in the number of communications submitted to it. At the opening of the Committee's thirty-ninth session, there were 140 cases pending. This increased work-load means that the Committee will not be able to examine communications at the same speed or to maintain the same level of quality unless the Secretariat staff is reinforced. The Human Rights Committee reiterates its request to the Secretary-General to take the necessary steps to ensure a substantial increase in the staff assigned to service the Committee.

C. New approaches to examine communications under the Optional Protocol

596. In view of the growing case-load, the Committee has continued to apply the new working methods devised during the previous year to enable it to deal more expeditiously with communications under the Optional Protocol.

1. Special Rapporteur on new communications

597. At its thirty-fifth session, the Committee had decided to designate a Special Rapporteur to process new communications, under rule 91 of the Committee's rules of procedure, as they are received, i.e. between sessions of the Committee. Mrs. Rosalyn Higgins was so designated for the period of one year. At its thirty-eighth session, the Committee renewed her mandate for an additional year. Between the relevant sessions she transmitted a number of new communications to the States parties concerned, under rule 91 of the Committee's rules of procedure, requesting information or observations relevant to the question of admissibility. In some cases Mrs. Higgins recommended to the Committee that certain communications be declared inadmissible without being forwarded to the State party.

2. Competence of the Working Group on Communications

598. At its thirty-sixth session the Committee decided to authorize the Working Group on Communications, consisting of five members, to adopt decisions to declare communications admissible when all the members so agree. Failing such agreement, the Working Group refers the matter to the Committee. It may also do so whenever it believes that the Committee itself should decide the question of admissibility. While the Working Group may not adopt decisions declaring communications inadmissible, it may make recommendations in this respect to the Committee. Pursuant to these rules the Working Group on Communications preceding the thirty-seventh, the thirty-eighth and the thirty-ninth sessions have declared 13 communications admissible.

D. Joinder of communications

599. Pursuant to rule 88, paragraph 2, of the Committees's rules of procedure, the Committee may, if appropriate, decide to deal jointly with two or more communications. During the period covered by this report, the Committee adopted one decision to deal jointly with three similar communications (Nos. 343, 344 and 345, R. A. V. N. *et al*. v. Argentina, annex X, sect. R) and one decision to deal jointly with two similar communications (still under consideration).

E. Individual opinions

600. In its work under the Optional Protocol, the Committee strives to reach its decisions by consensus, without resorting to voting. However, pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, members can append their individual opinions to the Committee's views. Pursuant to rule 92, paragraph 3, members can append their individual opinions to the Committee's views declaring communications inadmissible.

601. During the sessions covered by the present report, individual opinions were appended to the Committee's views in cases Nos. 167/1984 (Ominayak v. Canada), 181/1984 (Sanjuán Arévalo v. Colombia), 193/1985 (Giry v. Dominican Republic), 232/1987 (Pinto v. Trinidad and Tobago), 250/1987 (Carlton Reid v. Jamaica), 295/1988 (Järvinen v. Finland) and 305/1988 (van Alphen v. the Netherlands) and to the Committee's decisions declaring inadmissible communications Nos. 220/1987 (T. K. v. France), 222/1987 (M. K. v. France), 275/1988 (S. E. v. Argentina),

290/1988 (A. W. v. Jamaica), 343, 344 and 345/1988 (R. A. V. N. *et. al* v. Argentina) and 369/1989 (G. S. v. Jamaica).

F. New format of decisions on admissibility and final views

602. From the outset, the format of Committee decisions was relatively simple, consisting of a chronological rendering of the submissions by the authors and States parties, both at the admissibility and merits phases, followed by the Committee's application of the relevant provisions of the Covenant and Optional Protocol. The Committee has deemed that this method sometimes leads to considerable overlap and a general loss of clarity. For this reason the Committee considered it appropriate, at its thirty-seventh session, to introduce a new format for decisions, aimed at greater precision and brevity. The new format divides decisions into four parts under these rubrics: the background, the complaint, the State party's observations, and issues and proceedings before the Committee. The first case in which this method was employed was No. 208/1986 (Bhinder v. Canada). The new format has been followed in a number of decisions adopted at the thirty-eighth and thirty-ninth sessions. The Committee, however, shall continue using the earlier format in cases where the factual situation is uncertain or when a chronological description of events and submissions may be helpful for a better understanding of the Committee's decision.

G. Issues considered by the Committee

603. For a review of the Committee's work under the Optional Protocol from its second session in 1977 to its thirty-sixth session in 1989, the reader is referred to the Committee's annual reports for 1984, 1985, 1986, 1987, 1988 and 1989 which, *inter alia*, contain a summary of the procedural and substantive issues considered by the Committee and of the decisions taken. The full texts of the views adopted by the Committee and of its decisions declaring communications inadmissible under the Optional Protocol have been reproduced regularly in annexes to the Committee's annual reports.

604. The following summary reflects further developments of issues considered during the period covered by the present report.

1. Procedural issues

(a) *The requirement of exhaustion of domestic remedies* (Optional Protocol, art. 5, para. 2 (b))

605. Pursuant to article 5, paragraph 2 (b), of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. However, the Committee has already established that the rule of exhaustion applies only to the extent that these remedies are effective and available. The State party is required to give "details of the remedies which it submitted that had been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective" (case No. 4/1977, Torres Ramírez v. Uruguay). The rule also provides that the Committee is not

precluded from examining a communication if it is established that the application of the remedies in question is unreasonably prolonged.

606. In several cases concerning Jamaica, the Committee had to decide whether a petition for special leave to appeal to the Privy Council was an available remedy for the purposes of article 5, paragraph 2 (b), of the Optional Protocol. In declaring communication No. 281/1988 (C. G. v. Jamaica) inadmissible, the Committee observed "that the author has obtained legal representation for this purpose, and that his counsel in London is currently preparing a petition for special leave to appeal to the Judicial Committee of the Privy Council on his behalf. It cannot conclude, on the basis of the information before it, that a petition for special leave to appeal to the Judicial Committee of the Privy Council would not constitute an effective remedy available to the author within the meaning of article 5, paragraph 2 (b), of the Optional Protocol" (see annex X, sect. L, para. 6.3; see also case No. 251/1987, A. A. v. Jamaica, annex X, sect. E, para. 9.3).

(b) No claim under article 2 of the Optional Protocol

607. Article 2 of the Optional Protocol provides that "individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration".

608. Although at the stage of admissibility an author need not prove the alleged violation, he must submit sufficient evidence in substantiation of his allegation to constitute a *prima facie* case. A "claim" is therefore not just any allegation, but an allegation supported by a certain amount of substantiating evidence. Thus, in cases where the Committee finds that the author has failed to make at least a *prima facie* case before the Committee, justifying further examination on the merits, the Committee has held the communication inadmissible, according to rule 90 (b) of its rules of procedure, as amended at the thirty-sixth session, declaring that the author "has no claim under article 2 of the Optional Protocol".

609. In case No. 329/1988 (D. F. v. Jamaica) the author had been convicted of felonious assault and sentenced to 12 years of hard labour by a Jamaican court. The author alleged that the judge had misdirected the jury, in the light of contradictory evidence which was in the jury's competence to assess. In declaring the communication inadmissible, the Committee observed that "[w]hile article 14 of the Covenant guarantees the right to a fair trial, it is for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. It is not in principle for the Committee to review specific instructions to the jury by a judge in a trial by jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The Committee has no evidence that the trial judge's instructions had suffered from such defects. Accordingly, the author has no claim under article 2 of the Optional Protocol" (annex X, sect. Q, para. 5.2).

(c) Incompatibility (Optional Protocol, art. 3)

610. Case No. 268/1987 (M.G.B. *et al*. v. Trinidad and Tobago) concerns an application to register a legal aid company with the Registrar General of Trinidad. The Registrar of companies refused the application because the establishment of such a company by non-professionals was against public policy. The High Court of Trinidad dismissed the authors' complaint and the Court of Appeal

refused to consider their appeal as "urgent". The authors claimed that because of the "inordinate delays" in the determination of appeals by the Court of Appeal, they were victims of violations of articles 2 and 5 of the Covenant. In declaring the communications inadmissible at its thirty-seventh session, the Committee stated the following:

> "The Committee has considered the authors's allegations of a violation of articles 2(3) (a) and (b) and 5 of the Covenant and notes that these are general undertakings by States and cannot be invoked, in isolation, by individuals under the Optional Protocol. The Committee has *ex officio* examined whether the facts submitted raise potential issues under other articles of the Covenant. It has concluded that they do not. The Committee therefore finds that the communication is incompatible with the provisions of the Covenant within the meaning of article 3 of the Optional Protocol" (annex X, sect. I, para. 6.2).

611. In case No. 275/1988 (S. E. v. Argentina) and Nos. 343, 344 and 345/1988 (R. A. V. N. *et al*. v. Argentina) the authors claimed that article 2 of the Covenant had been violated because the persons responsible for the deaths or disappearance of their relatives had not been criminally prosecuted. In declaring the communications inadmissible pursuant to article 3 of the Optional Protocol, the Committee at its thirty-eighth session observed the following in case No. 275/1988 and in the other three cases:

> "To the extent that the author claims that the enactment of Law No. 23,521 frustrated a right to see certain government officials prosecuted, the Committee refers to its prior jurisprudence that the Covenant does not provide a right for an individual to require that the State party criminally prosecute another person (*H. C. M. A. v. the Netherlands*, communication No. 213/1986, paragraph 11.6, declared inadmissible on 30 March 1989). Accordingly, this part of the communication is inadmissible *ratione materiae* as incompatible with the provisions of the Covenant" (annex X, sect. J, para. 5.5).

(d) *Inadmissibility ratione temporis*

612. In the same cases, the Committee had occasion to reconfirm established jurisprudence concerning the significance of the date of entry into force of the Covenant and the Optional Protocol for the country concerned. The authors of the communications had claimed that the enactment of laws in 1986 (the "Finality Act" (Ley de Punto Final)) and 1987 (the Due Obedience Act (Ley de Obediencia Debida)) had frustrated their efforts to obtain a remedy for violations said to have occurred in 1976. The Committee observed as follows in case No. 275/1988, using the same language in cases Nos. 343, 344 and 345/1988:

> "With regard to the application *ratione temporis* of the International Covenant on Civil and Political Rights and of the Optional Protocol for Argentina, the Committee recalls that both instruments entered into force on 8 November 1986. It observes that the Covenant cannot be applied retroactively and that the Committee is precluded *ratione temporis* from examining alleged violations that occurred prior to the entry into force of the Covenant for the State party concerned" (annex X, sect. J, para. 5.2).

(e) Reservations/declarations

613. In cases Nos. 220/1987 (T. K. v. France) and 222/1987 (M. K. v. France) the authors, French citizens of Breton origin, complained that the French courts had consistently denied them the right to express themselves in their mother tongue, Breton, and that the Administrative Tribunal of Rennes had refused to consider their complaints filed in the Breton language on the grounds that only complaints submitted in French could be entertained. The authors alleged, inter alia, a violation of article 27, in respect of which the French Government had entered the following "declaration" upon accession to the Covenant: "In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable so far as the Republic is concerned".

614. In determining whether the declaration precluded it from considering alleged violations of article 27 by France, the Committee observed as follows, using the same language in both cases:

> "Article 2, paragraph 1(d), of the Vienna Convention on the Law of Treaties stipulates as follows: '"Reservation" means a unilateral statement, however phrased or named, made by a State, when ... acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.' The Convention does not make a distinction between reservations and declarations. The Covenant itself does not provide any guidance in determining whether a unilateral statement made by a State party upon accession to it should have preclusionary effect regardless of whether it is termed a reservation or declaration. The Committee observes in this respect that it is not the formal designation but the effect the statement purports to have that determines its nature. If the statement displays a clear intent on the part of the State party to exclude or modify the legal effect of a specific provision of a treaty, it must be regarded as a binding reservation, even if the statement is phrased as a declaration. In the present case, the statement entered by the French Government upon accession to the Covenant is clear: it seeks to exclude the application of article 27 to France and emphasizes this exclusion semantically with the words 'is not applicable'. The statement's intent is unequivocal and thus must be given preclusionary effect in spite of the terminology used. Furthermore, the State party's submission of 15 January 1989 also speaks of a French 'reservation' in respect of article 27. Accordingly, the Committee considers that it is not competent to consider complaints directed against France concerning alleged violations of article 27 of the Covenant" (annex X, sect. A, para. 8.6 and annex X, sect. B, para. 8.6).

(f) Competence of the Committee

615. Case No. 167/1984 (Bernard Ominayak and the Lubicon Lake Band v. Canada) was submitted by Chief Ominayak, a leader and representative of the Lubicon Lake Band, a Cree Indian band living within the borders of Canada in the Province of Alberta.

616. Despite its complex factual and legal background, the case basically concerned the alleged denial of the right of self-determination and the right of the members of the Lubicon Lake Band to dispose freely of their natural wealth and resources. It was claimed that the destruction of the Band's economic base and aboriginal way of life had already caused irreparable damage.

617. At its thirty-eighth session the Committee adopted views in the case, addressing the issue whether a violation of article 1 of the Covenant can be invoked before the Committee under the Optional Protocol. The Committee denied this possibility:

> "While all peoples have the right of self-determination and the right freely to determine their political status, pursue their economic, social and cultural development and dispose of their natural wealth and resources, as stipulated in article 1 of the Covenant, the question whether the Lubicon Lake Band constitutes a 'People' is not an issue for the Committee to address under the Optional Protocol to the Covenant. The Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated. These rights are set out in part III of the Covenant, articles 6 to 27, inclusive. There is, however, no objection to a group of individuals, who claim to be similarly affected, collectively to submit a communication about alleged breaches of their rights" (annex IX, sect. A, para. 32.1).

(g) Interim measures under rule 86

618. The authors of a number of cases currently before the Committee are convicted persons who have been sentenced to death and are awaiting execution. In view of the urgency of the communications, the Committee has requested the two States parties concerned, under rule 86 of the Committee's rules of procedure, not to carry out the death sentences before the Committee has had the opportunity to address such issues as are within its competence. Stays of execution have been granted in this connection.

2. Substantive issues

(a) Right to life (Covenant, art. 6)

619. Although capital punishment is not per se unlawful under the Covenant, article 6, paragraph 2, provides that a "sentence of death may be imposed only for the most serious of crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant" (emphasis added). Thus, a nexus is established between the imposition of a sentence of death and observance by State authorities of Covenant guarantees. Accordingly, in a case where the Committee found that the State party had violated article 14, paragraphs 3 (b) and (d), of the Covenant, in that the author had been denied a fair trial, the Committee held that under the circumstances the imposition of the sentence of death also entailed a violation of article 6. In its views in cases Nos. 232/1987 (Daniel Pinto v. Trinidad and Tobago) and 250/1987 (Carlton Reid v. Jamaica) the Committee observed as follows, using the same language in both cases:

> "The Committee is of the opinion that the imposition of a sentence of death after a trial in which the provisions of the Covenant have not been respected constitutes, if no appeal against the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted in general comment 6 (16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that 'the procedural guarantees therein prescribed must be observed, including the right

to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal'. In the present case, the final sentence of death having been passed without the requirements for a fair trial set forth in article 14 having been met, it must be concluded that the right protected by article 6 of the Covenant has been violated" (annex IX, sect. H, para. 12.6 and sect. J, para. 11.5).

(b) The right to security of person (Covenant, art. 9, para. 1)

620. Article 9 of the Covenant protects the right to liberty and security of person. In its prior jurisprudence, the Committee has examined allegations of violations of article 9 of the Covenant primarily from the aspect of deprivation of liberty. In its views on case No. 181/1984 (Sanjuán Arévalo v. Colombia), adopted at the thirty-seventh session, the Committee found a breach of article 9 in connection with the disappearance of the Sanjuán brothers which, apart from entailing a possible arbitrary detention, also entailed a violation of their right to security of person (annex IX, sect. B, para. 11). At its thirty-ninth session the Committee had the opportunity to expand on this notion in a case that did not involve arrest or detention. In case No. 195/1985 (Delgado Páez v. Colombia) the author had been subjected to various kinds of harassment, death threats and finally an attempt on his life, which led to his decision to leave the country and seek political asylum in France. Finding a violation of article 9, paragraph 1, of the Covenant, the Committee observed:

> "There appears to have been an objective need for Mr. Delgado to be provided by the State with protective measures for his security, given the threats made against him, the attack on his person, and the murder of a close colleague ... When the State party neither denies the threats nor cooperates with the Committee to explain if the relevant authorities knew them, and if so what was done about them, the Committee has necessarily to treat as correct allegations that the threats were known and nothing was done. Accordingly, while fully understanding the situation in Colombia, the Committee finds that the State party has not taken, or has been unable to take, appropriate measures to ensure Mr. Delgado's right to security of his person under article 9, paragraph 1" (annex IX, sect. D, para. 5.5).

(c) The right not to be subjected to arbitrary arrest or detention (Covenant, art. 9, para. 1)

621. In case No. 305/1988 (van Alphen v. the Netherlands), the author, a Dutch lawyer, claimed to have been arbitrarily deprived of his liberty. Arrested in connection with an alleged tax fraud scheme in which some of his clients were suspected of involvement, he was kept in detention for a period of nine weeks owing to his refusal to co-operate in the investigation against his clients, which he justified on the basis of the principle of lawyer-client confidentiality. The State party argued that there was no violation of article 9, because Mr. van Alphen's detention had been lawful. The Committee indicated that article 9 provided protection not only against unlawful but also against arbitrary arrest or detention. In doing so it observed:

> "The drafting history of article 9, paragraph 1, confirms that 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of

> predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances. Further, remand in custody must be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime. The State party has not shown that these factors were present in the instant case. It has, in fact, stated that the reason for the duration of the author's detention 'was that the applicant continued to invoke his obligation to maintain confidentiality despite the fact that the interested party had released him from his obligations in this respect', and that 'the importance of the criminal investigation necessitated detaining the applicant for reasons of accessibility'. Notwithstanding the waiver of the author's professional duty of confidentiality, he was not obliged to provide such co-operation. The Committee therefore finds that the facts as submitted disclose a violation of article 9, paragraph 1, of the Covenant" (annex IX, sect. M, para. 5.8).

(d) Review of the lawfulness of detention (Covenant, art. 9, para. 4)

622. In case No. 291/1988 (M. I. Torres v. Finland) the author, a Spanish citizen, had requested asylum in Finland in August 1987. In October 1987 he was detained under the Finnish Aliens Act. Following a request by the Spanish Government for his extradition as a suspect in a robbery that had occurred in Barcelona in 1984, his continued detention was based on the Law on the Extradition of Criminals. The author complained that during his detention pursuant to the Aliens Act he was not provided an opportunity to have recourse to a judicial body to challenge his detention. The State party argued that the author could have appealed the detention orders issued by the police pursuant to article 32 of the Aliens Act to the Minister of the Interior. The Committee held, however, that:

> "this possibility, while providing for some measure of protection and review of the legality of detention, does not satisfy the requirements of article 9, paragraph 4, which envisages that the legality of detention will be determined by a court so as to ensure a higher degree of objectivity and independence in such control. The Committee further notes that while the author was detained under orders of the police, he could not have the lawfulness of his detention reviewed by a court. Review before a court of law was possible only when, after seven days, the detention was confirmed by order of the Minister. As no challenge could have been made until the second week of detention, the author's detention from 8 to 15 October 1987, from 3 to 10 December 1987 and from 5 to 10 January 1988 violated the requirement of article 9, paragraph 4, of the Covenant that a detained person be able 'to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful'" (annex IX, sect. K, para. 7.2).

(e) Aliens' right not to be expelled arbitrarily (Covenant, art. 13)

623. Article 13 of the Covenant spells out that an alien, lawfully in the territory of a State party, may be expelled therefrom only in pursuance of a decision reached in accordance with law, that he should be allowed to submit the reasons against his expulsion and that he should be offered the opportunity to have his case reviewed and to be represented for that purpose before the competent authority. In case No. 193/1985 (Pierre Giry v. the Dominican Republic) the author complained that he was a victim of violations by the Dominican Republic of several provisions of the Covenant. He had entered the Dominican Republic legally. When preparing to leave

the country, two days later, he was apprehended by law enforcement officers at the airport in Santo Domingo and forced, against his will, to board an airplane for the United States of America, where he subsequently stood trial on drug charges and received a sentence of 28 years of imprisonment. The Committee observed that the manner in which Mr. Giry was forcibly removed from Dominican territory, notwithstanding the State party's invoking of the exception clause in article 13 of the Covenant concerning compelling reasons of national security, revealed a breach of the guarantees set out in the article for the protection of aliens. The Committee stressed that although States parties are fully entitled to vigorously protect their territory against the menace of drug dealing, including entering into extradition treaties with other States, the practice of enforcing such treaties, as existed between the Dominican Republic and the United States of America, must comply with the provisions of article 13 of the Covenant. The Committee further observed, as it had indicated in its general comments on the position of aliens 10/ that the term "expulsion" within the meaning of article 13 of the Covenant must be interpreted broadly and that it encompasses extradition.

(f) Right to a public hearing (Covenant, art. 14, para. 1)

624. Case No. 215/1986 (van Meurs v. the Netherlands) involved a labour law dispute between a Netherlands citizen and a pharmaceutical company. The author claimed that the proceedings before a subdistrict court ending in the termination of his employment contract violated article 14, paragraph 1, because they were held *in camera*. With regard to the application of article 14, paragraph 1, of the Covenant to the facts, the Committee observed that the proceedings at issue related to the rights and obligations of the parties in a suit at law, and that if labour disputes are argued in oral hearing before a court, they must be held in public. The Committee further observed "that courts must make information on time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, e.g., the potential public interest in the case, the duration of the oral hearing and the time the formal request for publicity has been made". In the specific circumstances of this case, however, the Committee was unable to make a finding of a violation of article 14, stating: "It is far from clear in this case whether the hearing was or was not held *in camera*. The author's communication does not state that he or his counsel formally requested that the proceedings be held in public, or that the sub-district court made any determination that they be held *in camera*. On the basis of the information before it, the Committee is unable to find that the proceedings in the author's case were incompatible with the requirement of a 'public hearing' within the meaning of article 14, paragraph 1" (annex IX, sect. F, paras. 6.1 and 6.2).

(g) Freedom of religion (Covenant, art. 18)

625. In case No. 208/1986 (Bhinder v. Canada) the author had claimed a violation of article 18 because his employer, the Canadian National Railroad, required all employees at the Toronto Coach Yard to wear hard hats. A Sikh by religion, Mr. Bhinder wears only a turban on his head and thus he refused to comply with the hard hat requirement and was dismissed from his job. In its views, adopted at its thirty-seventh session, the Committee, finding no violation of the provisions of the Covenant, observed as follows:

> "Whether one approaches the issue from the perspective of article 18 or article 26, in the views of the Committee the same conclusions must be reached. If the requirement that a hard hat be worn is regarded as raising issues under article 18, then it is a limitation that is justified by reference to the grounds laid down in article 18, paragraph 3. If the requirement that a hard hat be worn is seen as a discrimination *de facto* against persons of the Sikh religion under article 26, then, applying criteria now well established in the jurisprudence of the Committee, the legislation requiring that workers in federal employment be protected from injury and electric shock by the wearing of hats is to be regarded as reasonable and directed towards objective purposes that are compatible with the Covenant" (annex IX, sect. E, para. 6.2).

(h) Equality before the law, equal protection of the law (Covenant, art. 26)

626. In prior sessions the Committee had opportunity to pronounce on the scope of article 26 of the Covenant, including its applicability with regard to the treatment of conscientious objectors to military service. During its thirty-seventh session the Committee declared case No. 297/1988 (H. A. E. d. J. v. the Netherlands) incompatible with the provisions of the Covenant and inadmissible under article 3 of the Optional Protocol. The case concerned a Dutch national who claimed that he should have received supplementary benefits under the Dutch General Assistance Act while he was performing civilian service as a recognized conscientious objector. He claimed to be a victim of a violation of article 26 of the Covenant because he was not treated as a civilian but rather as a conscript and, accordingly, was not eligible for benefits under said social security legislation. In declaring the communication inadmissible, the Committee observed, as it did with respect to communications Nos. 245/1987 (R. T. Z. v. the Netherlands) and 267/1987 (M. J. G. v. the Netherlands):

> "that the Covenant does not preclude the institution by States parties of compulsory national service, which entails certain modest pecuniary payments. But regardless of whether that compulsory national service is performed by ways of military service or by permitted alternative service, there is no entitlement to be paid as if one were still in private civilian life. The Committee observes in this connection, as it did with respect to communication No. 218/1986 (Vos v. the Netherlands) that the scope of article 26 does not extend to differences in result of the uniform application of laws in the allocation of social security benefits. In the present case, there is no indication that the General Assistance Act is not applied equally to all citizens performing alternative service. Thus the Committee concludes that the communication is incompatible with the provisions of the Covenant and inadmissible under article 3 of the Optional Protocol" (annex X, sect. N, para. 8.2).

627. During its thirty-ninth session the Committee adopted views in case No. 295/1988 (Järvinen v. Finland), which concerned the question whether a legislative provision that alternative service be of a longer duration than military service entailed unequal treatment prohibited by the Covenant. In finding no violation, the Committee observed: "The main issue before the Committee is whether the specific conditions under which alternative service must be performed by the author constitute a violation of article 26 of the Covenant. That the Covenant itself does not provide a right to conscientious objection does not change this finding. Indeed, the prohibition of discrimination under article 26 is not

limited to those rights which are provided for in the Covenant. Article 26 of the Covenant, while prohibiting discrimination and guaranteeing equal protection of the law to everyone, does not prohibit all differences of treatment. Any differentiation, as the Committee has had the opportunity to state repeatedly, must, however, be based on reasonable and objective criteria. In determining whether the prolongation of the term for alternative service from twelve to sixteen months by Act No. 647/85, which was applied to Mr. Järvinen, was based on reasonable and objective criteria, the Committee has considered in particular the ratio legis of the Act and has found that the new arrangements were designed to facilitate the administration of alternative service. The legislation was based on practical considerations and had no discriminatory purpose. The Committee is, however, aware that the impact of the legislative differentiation works to the detriment of genuine conscientious objectors, whose philosophy will necessarily require them to accept civilian service. At the same time, the new arrangements were not merely for the convenience of the State alone. They removed from conscientious objectors the often difficult task of convincing the examination board of the genuineness of their beliefs; and they allowed a broader range of individuals potentially to opt for the possibility of alternative service. In all the circumstances, the extended length of alternative service is neither unreasonable nor punitive" (annex IX, sect. L, paras. 6.2-6.6).

(i) Minority rights (Covenant, art. 27)

628. In case No. 167/1984 (Ominayak v. Canada) the Committee examined the question whether the treatment of the Lubicon Lake Band by the Government of Canada and the Province of Alberta constituted violations of their minority rights. Finding a violation of article 27, the Committee recalled "that the rights protected by article 27 include the right of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong". It concluded:

> "Historical inequities, to which the State party refers, and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band and constitute a violation of article 27 so long as they continue. The State party proposes to rectify the situation by a remedy that the Committee deems appropriate within the meaning of article 2 of the Covenant" (annex IX, sect. A, para. 33).

H. Remedies called for under the Committee's views

629. The Committee's decisions on the merits are referred to as "views" in article 5, paragraph 4, of the Optional Protocol. After the Committee has made a finding of a violation of a provision of the Covenant, it proceeds to ask the State party to take appropriate steps to remedy the violation. For instance, in the period covered by the present report, the Committee, in a case concerning the disappearance and possible death of the victims, found that "the right to life enshrined in article 6 of the Covenant and the right to liberty and security of the person laid down in article 9 of the Covenant have not been effectively protected" by the State party. In its views the Committee stated that "it would welcome information on any relevant measures taken by the State party in respect of the Committee's views and, in particular, invites the State party to inform the Committee of further developments in the investigation of the disappearance of the Sanjuán brothers" (case No. 181/1984, Sanjuán v. Colombia, annex IX, sect. B,

paras. 11 and 12). In another case concerning an alien who was held pending extradition, the Committee found that there had been a violation of article 9, paragraph 4, of the Covenant, because the author had been unable to challenge his detention before a court during the initial seven days following the issuance of the detention order. In its views the Committee observed that "the State party is under an obligation to remedy the violations suffered by the author and to ensure that similar violations do not occur in the future", and indicated that "it would welcome information on any relevant measures taken by the State party in respect of the Committee's views" (case No. 291/1988, Torres v. Finland, annex IX, sect. K, para. 9).

630. In two cases where the authors had been sentenced to death after trials which the Committee held had violated their rights under article 14 of the Covenant, the Committee asked the States parties to release the authors (case No. 232/1987, Daniel Pinto v. Trinidad and Tobago, annex IX, sect. H, para. 13.1; and case No. 250/1987, Carlton Reid v. Jamaica, annex IX, sect. J, para. 12.2).

631. In two cases concerning Zairian opposition leaders who had been subjected inter alia to detention and internal banishment, the Committee found violations of articles 7, 9, 10, 12 and 17 of the Covenant. In its views the Committee concluded that "the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations suffered by the authors, in particular to ensure that they can effectively challenge these violations before a court of law, to grant appropriate compensation to Mr. Tshisekedi and Mr. Birindwa, and to ensure that similar violations do not occur in the future. The Committee takes this opportunity to indicate that it would welcome information on any relevant measures taken by the State party in respect of the Committee's views" (cases Nos. 241 and 242/1987, Birindwa and Tshisekedi v. Zaire, annex IX, sect. I, para. 14).

I. Monitoring compliance with the Committee's views under the Optional Protocol

632. From its second to thirty-seventh sessions, the Human Rights Committee had adopted views with respect to 100 communications received under the Optional Protocol and found violations in 85 of them. At the thirty-seventh session, Committee members considered that it would be appropriate at that point to assess the degree of State compliance with the Committee's views. Therefore, at its thirty-seventh session, the Human Rights Committee requested the Special Rapporteur on new communications to prepare a paper on the question of the Committee's powers in relation to the problems of responses of States parties to its views, to be submitted to the Working Group on Communications at its thirty-eighth session. The Committee, at its thirty-eighth session, considered the working paper submitted by the Special Rapporteur, as well as a working paper prepared by the Working Group and a working paper of the Secretariat. The discussion continued during the thirty-ninth session.

633. The Committee felt that it should seek information as to the follow-up to its views. In the past, the Committee had requested such information in notes verbales. Furthermore Committee members have used the opportunity of examining States' reports under article 40 to raise the issue (and, indeed, to present lists of cases to the States' representatives). However, only in a few cases was this information forwarded to the Committee. Thus the Committee very often had no

information on what had happened to a particular victim of a violation of the Covenant after it had issued its views. Further, the Committee has received letters of complaint from a number of victims stating that their situation remained unchanged or that no appropriate remedy had been provided.

634. At its thirty-ninth session the Committee therefore decided to adopt measures to follow up on its cases. These measures are reproduced in annex XI.

635. At its 1002th meeting, the Committee appointed as Special Rapporteur for follow-up of views, Mr. János Fodor, for a term of one year.

J. Information received from States parties following the adoption of final views

636. During its thirty-first session the Committee adopted its views on case No. 188/1984 (R. Martínez Portorreal v. the Dominican Republic). The Committee found violations of articles 7, 9 and 10 of the Covenant. During its thirty-ninth session, the Government of the Dominican Republic informed the Committee of the measures taken to remedy the violations, in particular, offering Mr. Martínez Portorreal and the members of the Dominican Committee for Human Rights all assurances and guarantees to facilitate their functions and issuing an official passport to Mr. Martínez Portorreal (annex XII, sect. A).

637. During its thirty-sixth session the Committee adopted its views on case No. 238/1987 (Bolaños v. Ecuador), finding a violation of article 9, paragraphs 1 and 3, and of article 14, paragraphs 1 and 3 (c). It urged the State party to release Mr. Bolaños from detention and grant him compensation. At its thirty-eighth session the State party informed the Committee that Mr. Bolaños had been released from detention and that the Government of Ecuador had endeavoured to remedy the violations against him by assisting him in finding employment (annex XII, sect. B).

638. During its thirty eighth session, the Committee adopted its views on case No. 291/1988 (M. I. Torres v. Finland). The Committee found a violation of article 9, paragraph 4, of the Covenant (see para. 622 above). During its thirty-ninth session, the Government of Finland informed the Committee that it had adopted legislative measures to remedy the situation (annex XII, sect. C).

639. The Committee welcomes the co-operation of the States parties and the positive responses to the views adopted by the Committee.

Notes

1/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40).

2/ Ibid., annex III.

3/ Ibid., Supplement No. 40 (A/44/40), para. 27.

4/ Ibid., Supplement No. 7 and corrigenda (A/44/7 and Corr.1 and 2).

Notes (continued)

5/ See *Official Records of the General Assembly, Thirty-second Session, Supplement No. 44* (A/32/44 and Corr.1), annex IV.

6/ *Ibid.*, *Thirty-sixth Session, Supplement No. 40* (A/36/40), annex V.

7/ *Ibid.*, annex VI.

8/ The reports and additional information of States parties are documents for general distribution and are listed in the annexes to the annual reports of the Committee; these documents, as well as the summary records of the Committee's meetings, are published in the bound volumes that are being issued, beginning with the years 1977 and 1978.

9/ As at 22 May 1990, the People's Democratic Republic of Yemen and the Yemen Arab Republic merged into a single sovereign State, the Republic of Yemen. The People's Democratic Republic of Yemen had acceded to the International Covenant on Civil and Political Rights on 9 May 1987. The Yemen Arab Republic was not a State party to the Covenant.

10/ *Official Records of the General Assembly, Forty-first Session, Supplement No. 40* (A/41/40), annex VI, para. 9.

ANNEX I

States parties to the International Covenant on Civil and Political Rights and to the Optional Protocol and States which have made the declaration under article 41 of the Covenant as at 27 July 1990, and status of the Second Optional Protocol, aiming at the abolition of the death penalty

A. States parties to the International Covenant on Civil and Political Rights (92)

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Afghanistan	24 January 1983 a/	24 April 1983
Algeria	12 September 1989	12 December 1989
Argentina	8 August 1986	8 November 1986
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Barbados	5 January 1973 a/	23 March 1976
Belgium	21 April 1983	21 July 1983
Bolivia	12 August 1982 a/	12 November 1982
Bulgaria	21 September 1970	23 March 1976
Burundi	9 May 1990 a/	9 August 1990
Byelorussian Soviet Socialist Republic	12 November 1973	23 March 1976
Cameroon	27 June 1984 a/	27 September 1984
Canada	19 May 1976 a/	19 August 1976
Central African Republic	8 May 1981 a/	8 August 1981
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976

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a/ Accession.

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Congo	5 October 1983 a/	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Cyprus	2 April 1969	23 March 1976
Czechoslovakia	23 December 1975	23 March 1976
Democratic People's Republic of Korea	14 September 1981 a/	14 December 1981
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 a/	4 April 1978
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982
El Salvador	30 November 1979	29 February 1980
Equatorial Guinea	25 September 1987 a/	25 December 1987
Finland	19 August 1975	23 March 1976
France	4 November 1980 a/	4 February 1981
Gabon	21 January 1983 a/	21 April 1983
Gambia	22 March 1979 a/	22 June 1979
German Democratic Republic	8 November 1973	23 March 1976
Germany, Federal Republic of	17 December 1973	23 March 1976
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979
India	10 April 1979 a/	10 July 1979
Iran (Islamic Republic of)	24 June 1975	23 March 1976
Iraq	25 January 1971	23 March 1976

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Ireland	8 December 1989	8 March 1990
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Japan	21 June 1979	21 September 1979
Jordan	28 May 1975	23 March 1976
Kenya	1 May 1972 a/	23 March 1976
Lebanon	3 November 1972 a/	23 March 1976
Libyan Arab Jamahiriya	15 May 1970 a/	23 March 1976
Luxembourg	18 August 1983	18 November 1983
Madagascar	21 June 1971	23 March 1976
Mali	16 July 1974 a/	23 March 1976
Mauritius	12 December 1973 a/	23 March 1976
Mexico	23 March 1981 a/	23 June 1981
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1979
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 a/	12 June 1980
Niger	7 March 1986 a/	7 June 1986
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	28 April 1978	28 July 1978
Philippines	23 October 1986	23 January 1987
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Republic of Korea	10 April 1990 a/	10 July 1990
Romania	9 December 1974	23 March 1976
Rwanda	16 April 1975 a/	23 March 1976
Saint Vincent and the Grenadines	9 November 1981 a/	9 February 1982
San Marino	18 October 1985 a/	18 January 1986
Senegal	13 February 1978	13 May 1978
Somalia	24 January 1990 a/	24 April 1990
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980 a/	11 September 1980
Sudan	18 March 1986 a/	18 June 1986
Suriname	28 December 1976 a/	28 March 1977
Sweden	6 December 1971	23 March 1976
Syrian Arab Republic	21 April 1969 a/	23 March 1976
Togo	24 May 1984 a/	24 August 1984
Trinidad and Tobago	21 December 1978 a/	21 March 1979
Tunisia	18 March 1969	23 March 1976
Ukrainian Soviet Socialist Republic	12 November 1973	23 March 1976
Union of Soviet Socialist Republics	16 October 1973	23 March 1976
United Kingdom of Great Britain and Northern Ireland	20 May 1976	20 August 1976
United Republic of Tanzania	11 June 1976 a/	11 September 1976
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Viet Nam	24 September 1982 a/	24 December 1982

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Yemen b/		
Yugoslavia	2 June 1971	23 March 1976
Zaire	1 November 1976 a/	1 February 1977
Zambia	10 April 1984 a/	10 July 1984

B. States parties to the International Covenant on Civil and Political Rights which have made the declaration under article 41 of the Covenant (27)

State party	Valid from	Valid until
Algeria	12 September 1989	Indefinitely
Argentina	8 August 1986	Indefinitely
Austria	10 September 1978	Indefinitely
Belgium	5 March 1987	Indefinitely
Canada	29 October 1979	Indefinitely
Congo	7 July 1989	Indefinitely
Denmark	23 March 1976	Indefinitely
Ecuador	24 August 1984	Indefinitely
Finland	19 August 1975	Indefinitely
Gambia	9 June 1988	Indefinitely
Germany, Federal Republic of	28 March 1979	27 March 1991
Hungary	7 September 1988	Indefinitely
Iceland	22 August 1979	Indefinitely

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b/ As of 22 May 1990 the People's Democratic Republic of Yemen and the Yemen Arab Republic merged into a single sovereign State, the Republic of Yemen, with Sana'a as its capital. The People's Democratic Republic of Yemen had acceded to the Covenant on 9 May 1987. The Yemen Arab Republic was not a State party to the Covenant.

State party	Valid from	Valid until
Ireland	8 December 1989	Indefinitely
Italy	15 September 1978	Indefinitely
Luxembourg	18 August 1983	Indefinitely
Netherlands	11 December 1978	Indefinitely
New Zealand	28 December 1978	Indefinitely
Norway	23 March 1976	Indefinitely
Peru	9 April 1984	Indefinitely
Philippines	23 October 1986	Indefinitely
Republic of Korea	10 April 1990	Indefinitely
Senegal	5 January 1981	Indefinitely
Spain	25 January 1985	25 January 1993
Sri Lanka	11 June 1980	Indefinitely
Sweden	23 March 1976	Indefinitely
United Kingdom of Great Britain and Northern Ireland	20 May 1976	Indefinitely

C. States parties to the Optional Protocol (50)

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Algeria	12 September 1989 a/	12 December 1990
Argentina	8 August 1986 a/	8 November 1986
Austria	10 December 1987	10 March 1988
Barbados	5 January 1973 a/	23 March 1976
Bolivia	12 August 1982 a/	12 November 1982
Cameroon	27 June 1984 a/	27 September 1984
Canada	19 May 1976 a/	19 August 1976

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Central African Republic	8 May 1981 a/	8 August 1981
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 a/	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 a/	4 April 1978
Ecuador	6 March 1969	23 March 1976
Equatorial Guinea	25 September 1987 a/	25 December 1987
Finland	19 August 1975	23 March 1976
France	17 February 1984 a/	17 May 1984
Gambia	9 June 1988 a/	9 September 1988
Hungary	7 September 1988 a/	7 December 1988
Iceland	22 August 1979 a/	22 November 1979
Ireland	8 December 1989	8 March 1990
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Libyan Arab Jamahiriya	16 May 1989 a/	16 August 1989
Luxembourg	18 August 1983 a/	18 November 1983
Madagascar	21 June 1971	23 March 1976
Mauritius	12 December 1973 a/	23 March 1976
Netherlands	11 December 1978	11 March 1979
New Zealand	26 May 1989 a/	26 August 1989
Nicaragua	12 March 1980 a/	12 June 1980
Niger	7 March 1986 a/	7 June 1986
Norway	13 September 1972	23 March 1976

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Panama	8 March 1977	8 June 1977
Peru	3 October 1980	3 January 1981
Philippines	22 August 1989 a/	22 November 1989
Portugal	3 May 1983	3 August 1983
Republic of Korea	10 April 1990 a/	10 July 1990
Saint Vincent and the Grenadines	9 November 1981 a/	9 February 1982
San Marino	18 October 1985 a/	18 January 1986
Senegal	13 February 1978	13 May 1978
Somalia	24 January 1990 a/	24 April 1990
Spain	25 January 1985 a/	25 April 1985
Suriname	28 December 1976 a/	28 March 1977
Sweden	6 December 1971	23 March 1976
Togo	30 March 1988 a/	30 June 1988
Trinidad and Tobago	14 November 1980 a/	14 February 1981
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Zaire	1 November 1976 a/	1 February 1977
Zambia	10 April 1984 a/	10 July 1984

D. Status of the Second Optional Protocol, aiming at the abolition of the death penalty [c]

State party	Signature	Date of receipt of the instrument of ratification or accession [a]
Belgium	12 July 1990	-
Costa Rica	14 February 1990	-
Denmark	13 February 1990	-
Finland	13 February 1990	-
German Democratic Republic	7 March 1990	-
Germany, Federal Republic of	13 February 1990	-
Honduras	10 May 1990	-
Italy	13 February 1990	-
Luxembourg	13 February 1990	-
New Zealand	22 February 1990	22 February 1990
Nicaragua	21 February 1990	-
Norway	13 February 1990	-
Portugal	13 February 1990	-
Romania	15 March 1990	-
Spain	23 February 1990	-
Sweden	13 February 1990	11 May 1990
Uruguay	13 February 1990	-
Venezuela	7 June 1990	

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[c] The Second Optional Protocol was adopted and opened for signature, ratification or accession in New York on 15 December 1989 and will enter into force three months after the date of deposit with the Secretary-General of the tenth instrument of ratification or accession.

ANNEX II

Membership and officers of the Human Rights Committee, 1989-1990

A. Membership

Name of member	Country of nationality
Mr. Francisco José AGUILAR URBINA**	Costa Rica
Mr. Nisuke ANDO*	Japan
Miss Christine CHANET*	France
Mr. Joseph A. L. COORAY*	Sri Lanka
Mr. Vojin DIMITRIJEVIC*	Yugoslavia
Mr. Omran EL SHAFEI*	Egypt
Mr. János FODOR**	Hungary
Mrs. Rosalyn HIGGINS**	United Kingdom of Great Britain and Northern Ireland
Mr. Rajsoomer LALLAH**	Mauritius
Mr. Andreas V. MAVROMMATIS**	Cyprus
Mr. Joseph A. MOMMERSTEEG*	Netherlands
Mr. Rein A. MYULLERSON**	Union of Soviet Socialist Republics
Mr. Birame NDIAYE*	Senegal
Mr. Fausto POCAR**	Italy
Mr. Julio PRADO VALLEJO*	Ecuador
Mr. Alejandro SERRANO CALDERA**	Nicaragua
Mr. S. Amos WAKO**	Kenya
Mr. Bertil WENNERGREN*	Sweden

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* Term expires on 31 December 1990.

** Term expires on 31 December 1992.

B. Officers

The officers of the Committee, elected for two-year terms at the 868th and 869th meetings, held on 20 March 1989, are as follows:

Chairman: Mr. Rajsoomer Lallah

Vice-Chairmen: Mr. Joseph A. L. Cooray
Mr. Vojin Dimitrijevic
Mr. Alejandro Serrano Caldera

Rapporteur: Mr. Fausto Pocar

ANNEX III

Agendas of the thirty-seventh, thirty-eighth and thirty-ninth sessions of the Human Rights Committee

Thirty-seventh session

At its 923rd meeting, on 23 October 1989, the Committee adopted the following provisional agenda (see CCPR/C/61), submitted by the Secretary-General in accordance with rule 6 of the rules of procedure, as the agenda of its thirty-seventh session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 40 of the Covenant.
4. Consideration of reports submitted by States parties under article 40 of the Covenant.
5. Consideration of communications under the Optional Protocol to the Covenant.

Thirty-eighth session

At its 951st meeting, on 19 March 1990, the Committee adopted the following provisional agenda (see CCPR/C/65), submitted by the Secretary-General in accordance with rule 6 of the rules of procedure, as the agenda of its thirty-eighth session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Action by the General Assembly at its forty-fourth session:
    (a) Annual report submitted by the Human Rights Committee under article 45 of the Covenant;
    (b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights.
4. Submission of reports by States parties under article 40 of the Covenant.
5. Consideration of reports submitted by States parties under article 40 of the Covenant.
6. Consideration of communications under the Optional Protocol to the Covenant.

Thirty-ninth session

At its 980th meeting, on 9 July 1990, the Committee adopted the following provisional agenda (see CCPR/C/66), submitted by the Secretary-General in accordance with rule 6 of the rules of procedure, as the agenda of its thirty-ninth session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 40 of the Covenant.
4. Consideration of reports submitted by States parties under article 40 of the Covenant.
5. Consideration of communications under the Optional Protocol to the Covenant.
6. Annual report of the Committee to the General Assembly through the Economic and Social Council under article 45 of the Covenant and article 6 of the Optional Protocol.

ANNEX IV

Submission of reports and additional information by States parties under article 40 of the Covenant during the period under review a/

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
	A. Initial reports of States parties due in 1983		
Saint Vincent and the Grenadines	8 February 1983	5 September 1989	-
	B. Initial reports of States parties due in 1984		
Gabon	20 April 1984	Not yet received	(1) 15 May 1985 (2) 5 August 1985 (3) 15 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 7 April 1987 (7) 1 December 1987 (8) 6 June 1988 (9) 21 November 1988 (10) 10 May 1989 (11) 12 December 1989 (12) 15 May 1990
	C. Initial reports of States parties due in 1987		
Niger	9 June 1987	Not yet received	(1) 1 December 1987 (2) 6 June 1988 (3) 21 November 1988 (4) 10 May 1989 (5) 12 December 1989 (6) 15 May 1990
Sudan	17 June 1987	Not yet received	(1) 1 December 1987 (2) 6 June 1988 (3) 21 November 1988 (4) 10 May 1989 (5) 12 December 1989 (6) 15 May 1990

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
D. Initial reports of States parties due in 1988			
Equatorial Guinea	24 December 1988	Not yet received	(1) 10 May 1989
			(2) 12 December 1989
			(3) 15 May 1990
E. Second periodic reports of States parties due in 1983			
Libyan Arab Jamahiriya	4 February 1983	Not yet received	(1) 10 May 1984
			(2) 15 May 1985
			(3) 13 August 1985
			(4) 18 November 1985
			(5) 6 May 1986
			(6) 8 August 1986
			(7) 1 May 1987
			(8) 24 July 1987
			(9) 1 December 1987
			(10) 6 June 1988
			(11) 21 November 1988
			(12) 10 May 1989
			(13) 12 December 1989
			(14) 15 May 1990
Iran (Islamic Republic of)	21 March 1983	Not yet received	(1) 10 May 1984
			(2) 15 May 1985
			(3) 13 August 1985
			(4) 18 November 1985
			(5) 6 May 1986
			(6) 8 August 1986
			(7) 1 May 1987
			(8) 24 July 1987
			(9) 1 December 1987
			(10) 6 June 1988
			(11) 21 November 1988
			(12) 10 May 1989
			(13) 12 December 1989
			(14) 15 May 1990
Madagascar	3 August 1983	13 July 1990	-

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
F. Second periodic reports of States parties due in 1984			
Bulgaria	28 April 1984	Not yet received	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987 (7) 1 August 1987 (8) 1 December 1987 (9) 6 June 1988 (10) 21 November 1988 (11) 10 May 1989 (12) 12 December 1989 (13) 15 May 1990
Cyprus	18 August 1984	Not yet received	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987 (7) 7 August 1987 (8) 1 December 1987 (9) 6 June 1988 (10) 21 November 1988 (11) 10 May 1989 (12) 12 December 1989 (13) 15 May 1990
Syrian Arab Republic	18 August 1984	Not yet received	(1) 15 May 1985 (2) 5 August 1985 (3) 18 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 1 May 1987 (7) 7 August 1987 (8) 1 December 1987 (9) 6 June 1988 (10) 21 November 1988 (11) 10 May 1989 (12) 12 December 1989 (13) 15 May 1990
G. Second periodic reports of States parties due in 1985			
New Zealand-Cook Islands	27 March 1985	Not yet received	(1) 12 December 1989 (2) 15 May 1990

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Gambia	21 June 1985	Not yet received	(1) 9 August 1985
			(2) 18 November 1985
			(3) 6 May 1986
			(4) 8 August 1986
			(5) 1 May 1987
			(6) 1 December 1987
			(7) 6 June 1988
			(8) 21 November 1988
			(9) 10 May 1989
			(10) 12 December 1989
			(11) 15 May 1990
Suriname	2 August 1985	Not yet received	(1) 18 November 1985
			(2) 6 May 1986
			(3) 8 August 1986
			(4) 1 May 1987
			(5) 1 December 1987
			(6) 6 June 1988
			(7) 21 November 1988
			(8) 10 May 1989
			(9) 12 December 1989
			(10) 15 May 1990
Venezuela	1 November 1985	Not yet received	(1) 20 November 1985
			(2) 6 May 1986
			(3) 8 August 1986
			(4) 1 May 1987
			(5) 1 December 1987
			(6) 6 June 1988
			(7) 21 November 1988
			(8) 10 May 1989
			(9) 12 December 1989
			(10) 15 May 1990

H. Second periodic reports of States parties due in 1986

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Lebanon	21 March 1986	Not yet received	(1) 10 May 1986
			(2) 8 August 1986
			(3) 1 May 1987
			(4) 13 August 1987
			(5) 1 December 1987
			(6) 6 June 1988
			(7) 21 November 1988
			(8) 10 May 1989
			(9) 12 December 1989
			(10) 15 May 1990

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Kenya	11 April 1986	Not yet received	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 1 December 1987 (5) 6 June 1988 (6) 21 November 1988 (7) 10 May 1989 (8) 12 December 1989 (9) 15 May 1990
Mali	11 April 1986	Not yet received	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 1 December 1987 (5) 6 June 1988 (6) 21 November 1988 (7) 10 May 1989 (8) 12 December 1989 (9) 15 May 1990
United Republic of Tanzania	11 April 1986	Not yet received	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 1 December 1987 (5) 6 June 1988 (6) 21 November 1988 (7) 10 May 1989 (8) 12 December 1989 (9) 15 May 1990
Jamaica	1 August 1986	Not yet received	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988 (4) 21 November 1988 (5) 10 May 1989 (6) 12 December 1989 (7) 15 May 1990
Sri Lanka	10 September 1986	22 March 1990	-
Morocco	31 October 1986	22 March 1990	-
Netherlands Antilles	31 October 1986	Not yet received	(1) 12 December 1989 (2) 15 May 1990

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
I. Second periodic reports of States parties due in 1987			
Jordan	22 January 1987	18 December 1989	-
Guyana	10 April 1987	Not yet received	(1) 1 May 1987 (2) 1 December 1987 (3) 6 June 1988 (4) 21 November 1988 (5) 10 May 1989 (6) 12 December 1989 (7) 15 May 1990
Iceland	30 October 1987	Not yet received	(1) 1 December 1987 (2) 6 June 1988 (3) 21 November 1988 (4) 10 May 1989 (5) 12 December 1989 (6) 15 May 1990
Democratic People's Republic of Korea	13 December 1987	Not yet received	(1) 23 June 1988 (2) 21 November 1988 (3) 10 May 1989 (4) 12 December 1989 (5) 15 May 1990
J. Second periodic reports of States parties due in 1988			
Saint Vincent and the Grenadines	8 February 1988	b/	-
Austria	9 April 1988	20 July 1990	-
Peru	9 April 1988	Not yet received	(1) 21 November 1988 (2) 10 May 1989 (3) 12 December 1989 (4) 15 May 1990
Egypt	13 April 1988	Not yet received	(1) 21 November 1988 (2) 10 May 1989 (3) 12 December 1989 (4) 15 May 1990
Viet Nam	23 December 1988	c/	-
El Salvador d/	31 December 1988	Not yet received	(1) 10 May 1989 (2) 12 December 1989 (3) 15 May 1990

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
K. Second periodic reports of States parties due in 1989			
Central African Republic e/	9 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990
Gabon f/	20 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990
Afghanistan	23 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990
Belgium	20 July 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990
Guinea g/	30 September 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990
Luxembourg	17 November 1989	Not yet received	(1) 15 May 1990
L. Second periodic reports of States parties due in 1990 (within the period under review) h/			
Congo	4 January 1990	Not yet received	(1) 15 May 1990
Zambia	9 July 1990	Not yet received	-
Bolivia i/	13 July 1990	Not yet received	-
M. Third periodic reports of States parties due in 1988			
Zaire	30 January 1988	j/	-
Libyan Arab Jamahiriya k/	4 February 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1989 (3) 10 May 1989 (4) 12 December 1989 (5) 15 May 1990
Iran (Islamic Republic of) k/	21 March 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1988 (3) 10 May 1989 (4) 12 December 1989 (5) 15 May 1990

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Lebanon k/	21 March 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1988 (3) 10 May 1989 (4) 12 December 1989 (5) 15 May 1990
Panama	6 June 1988	Not yet received	-
Madagascar k/	3 August 1988	Not yet received	(1) 21 November 1988 (2) 10 May 1989 (3) 12 December 1989 (4) 15 May 1990
Yugoslavia	3 August 1988	Not yet received	(1) 21 November 1988 (2) 10 May 1989 (3) 12 December 1989 (4) 15 May 1990
Byelorussian SSR	4 November 1988	4 July 1990	-

N. Third periodic reports of States parties due in 1989

Dominican Republic	3 April 1989	l/	-
Bulgaria k/	28 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990
Romania	28 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990
Cyprus k/	18 August 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990
Finland	18 August 1989	28 August 1989	-
Syrian Arab Republic k/	18 August 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990
Ukrainian SSR	18 August 1989	12 January 1990	-
United Kingdom of Great Britain and Northern Ireland	18 August 1989	20 October 1989	-
Poland	27 October 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990
Sweden	27 October 1989	30 October 1989	-

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Ecuador m/	4 November 1989	7 June 1990	-

O. Third periodic reports of States parties due in 1990 (within the period under review) n/

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have not yet been submitted
Trinidad and Tobago	20 March 1990	Not yet received	(1) 15 May 1990
Uruguay o/	21 March 1990	Not yet received	(1) 15 May 1990
New Zealand	27 March 1990	Not yet received	(1) 15 May 1990
Canada	4 April 1990	Not yet received	-
Iraq	4 April 1990	Not yet received	(1) 15 May 1990
Mongolia	4 April 1990	Not yet received	(1) 15 May 1990
Senegal	4 April 1990	Not yet received	(1) 15 May 1990
Gambia k/	21 June 1990	Not yet received	-
India	9 July 1990	Not yet received	-
Mauritius p/	18 July 1990	Not yet received	-

Notes

a/ From 28 July 1989 to 27 July 1990 (end of the thirty-ninth session).

b/ Pursuant to the Committee's decision taken at its thirty-eighth session (973rd meeting), the new date for submission of the second periodic report of Saint Vincent and the Grenadines is 31 October 1991.

c/ At its thirty-ninth session (1003rd meeting), the Committee decided to extend the deadline for the submission of the second periodic report of Viet Nam from 23 December 1988 to 31 July 1991.

d/ At its twenty-ninth session, the Committee decided to extend the deadline for the submission of the second periodic report of El Salvador from 28 February 1986 to 31 December 1988.

e/ At its thirty-second session (794th meeting), the Committee decided to extend the deadline for the submission of the second periodic report of the Central African Republic from 7 August 1987 to 9 April 1989.

f/ The State party's initial report has not yet been received.

Notes (continued)

g/ At the Committee's thirty-second session (792nd meeting), the deadline for the submission of the second periodic report of Guinea was set for 30 September 1989.

h/ For a complete list of States parties whose second periodic reports are due in 1990, see CCPR/C/63.

i/ At its thirty-sixth session (914th meeting), the Committee decided to extend the deadline for the submission of the second periodic report of Bolivia from 11 November 1988 to 13 July 1990.

j/ At its thirty-ninth session (1003rd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Zaire from 30 January 1988 to 31 July 1991.

k/ The State party's second periodic report has not yet been received.

l/ Pursuant to the Committee's decision taken at its thirty-eighth session (973rd meeting), the new date for the submission of the Dominican Republic's third periodic report is 31 October 1991.

m/ At its thirty-third session (833rd meeting), the Committee decided to extend the deadline for the submission of Ecuador's third periodic report from 4 November 1988 to 4 November 1989.

n/ For a complete list of States parties whose third periodic reports are due in 1990, see CCPR/C/64.

o/ At its thirty-fifth session (891st meeting), the Committee decided to extend the deadline for the submission of Uruguay's third periodic report from 21 March 1989 to 21 March 1990.

p/ At its thirty-sixth session (914th meeting), the Committee decided to extend the deadline for the submission of Mauritius' third periodic report from 4 November 1988 to 18 July 1990.

ANNEX V

Status of reports considered during the period under review and of reports still pending before the Committee

States parties	Date due	Date of submission	Meetings at which considered
		A. Initial reports	
Saint Vincent and the Grenadines	8 February 1983	5 September 1989	953rd and 954th (thirty-eighth session)
Viet Nam	23 December 1983	7 July 1989	982nd, 983rd, 986th and 987th (thirty-ninth session)
San Marino	17 January 1987	14 September 1988	980th and 981st (thirty-ninth session)
Argentina	7 November 1987	11 April 1989	952nd, 955th and 956th (thirty-eighth session)
Democratic Yemen	8 May 1988	18 January 1989	927th and 932nd (thirty-seventh session)
		B. Second periodic reports	
Madagascar	3 August 1983	13 July 1990	Not yet considered
India	9 July 1985	12 July 1989	Not yet considered
Costa Rica	2 August 1985	11 November 1988	958th-960th (thirty-eighth session)
Dominican Republic	29 March 1986	1 September 1988	967th-970th (thirty-eighth session)
Nicaragua	11 June 1986	29 November 1988	975th-978th (thirty-eighth session)
Portugal	1 August 1986	1 May 1987 30 June 1988 a/	934th-937th (thirty-seventh session)
Sri Lanka	10 September 1986	22 March 1990	Not yet considered
Morocco	31 October 1986	22 March 1990	Not yet considered
Panama	31 December 1986	4 August 1988	Not yet considered
Jordan	22 January 1987	18 December 1989	Not yet considered

States parties	Date due	Date of submission	Meetings at which considered
Canada	8 April 1988	28 July 1989	Not yet considered
Austria	9 April 1988	10 July 1990	Not yet considered
Zaire	1 February 1989	20 February 1989	993rd-995th (thirty-ninth session)

C. Third periodic reports

Czechoslovakia	4 February 1988	17 January 1989	Not yet considered
German Democratic Republic	4 February 1988	8 July 1988	Not yet considered
Tunisia	4 February 1988	17 April 1989	990th-992nd (thirty-ninth session)
Germany, Federal Republic of	3 August 1988	1 December 1988	963rd-965th (thirty-eighth session)
Union of Soviet Socialist Republics	4 November 1988	26 August 1988	928th-931st (thirty-seventh session)
Byelorussian Soviet Socialist Republic	4 November 1988	4 July 1990	Not yet considered
Chile	28 April 1989	3 May 1989	942nd-945th (thirty-seventh session)
Spain	28 April 1989	28 April 1989 1 June 1989	Not yet considered
Finland	18 August 1989	28 August 1989	Not yet considered
Ukrainian Soviet Socialist Republic	18 August 1989	12 January 1990	Not yet considered
United Kingdom of Great Britain and Northern Ireland	18 August 1989	12 January 1990	Not yet considered
Sweden	27 October 1989	30 October 1989	Not yet considered

States parties	Date of submission	Meetings at which considered
D. Additional information submitted subsequent to the examination of initial reports by the Committee		
Kenya b/	4 May 1982	Not yet considered
Gambia b/	5 June 1984	Not yet considered
Panama b/	30 July 1984	Not yet considered
Zaire c/	23 September 1988	993rd-995th (thirty-ninth session)
E. Additional information submitted subsequent to the examination of second periodic reports by the Committee		
Finland	4 June 1986	Not yet considered
Sweden	1 July 1986	Not yet considered

Notes

a/ Date of resubmission.

b/ At its twenty-fifth session (601st meeting), the Committee decided to consider the report together with the State party's second periodic report.

c/ The report was considered together with Zaire's second periodic report.

ANNEX VI

General comments a/ under article 40, paragraph 4, of the International Covenant on Civil and Political Rights

A. General comment No. 18 (37) b/, c/ (non-discrimination)

1. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a basic and general principle relating to the protection of human rights. Thus, article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Indeed, the principle of non-discrimination is so basic that article 3 obligates each State party to ensure the equal right of men and women to the enjoyment of the rights set forth in the Covenant. While article 4, paragraph 1, allows States parties to take measures derogating from certain obligations under the Covenant in time of public emergency, the same article requires, *inter alia*, that those measures should not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Furthermore, article 20, paragraph 2, obligates States parties to prohibit, by law, any advocacy of national, racial or religious hatred which constitutes incitement to discrimination.

3. Because of their basic and general character, the principle of non-discrimination as well as that of equality before the law and equal protection of the law are sometimes expressly referred to in articles relating to particular categories of human rights. Article 14, paragraph 1, provides that all persons shall be equal before the courts and tribunals, and paragraph 3 of the same article provides that, in the determination of any criminal charge against him, everyone shall be entitled, in full equality, to the minimum guarantees enumerated in subparagraphs (a) to (g) of paragraph 3. Similarly, article 25 provides for the equal participation in public life of all citizens, without any of the distinctions mentioned in article 2.

4. It is for the States parties to determine appropriate measures to implement the relevant provisions. However, the Committee is to be informed about the nature of such measures and their conformity with the principles of non-discrimination and equality before the law and equal protection of the law.

5. The Committee wishes to draw the attention of States parties to the fact that the Covenant sometimes expressly requires them to take measures to guarantee the equality of rights of the persons concerned. For example, article 23, paragraph 4, stipulates that States parties shall take appropriate steps to ensure equality of rights as well as responsibilities of spouses as to marriage, during marriage and at its dissolution. Such steps may take the form of legislative, administrative or

other measures, but it is a positive duty of States parties to make certain that spouses have equal rights as required by the Covenant. In relation to children, article 24 provides that all children, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, have the right to such measures of protection as are required by their status as minors, on the part of their family, society and the State.

6. The Committee notes that the Covenant neither defines the term "discrimination" nor indicates what constitutes discrimination. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Similarly, article 1 of the Convention on the Elimination of All Forms of Discrimination against Women provides that "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

7. While these conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

8. The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance. In this connection, the provisions of the Covenant are explicit. For example, article 6, paragraph 5, prohibits the death sentence from being imposed on persons below 18 years of age. The same paragraph prohibits that sentence from being carried out on pregnant women. Similarly, article 10, paragraph 3, requires the segregation of juvenile offenders from adults. Furthermore, article 25 guarantees certain political rights, differentiating on grounds of citizenship.

9. Reports of many States parties contain information regarding legislative as well as administrative measures and court decisions which relate to protection against discrimination in law, but they very often lack information which would reveal discrimination in fact. When reporting on articles 2 (1), 3 and 26 of the Covenant, States parties usually cite provisions of their constitution or equal opportunity laws with respect to equality of persons. While such information is of course useful, the Committee wishes to know if there remain any problems of discrimination in fact, which may be practised either by public authorities, by the community, or by private persons or bodies. The Committee wishes to be informed about legal provisions and administrative measures directed at diminishing or eliminating such discrimination.

10. The Committee also wishes to point out that the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.

11. Both article 2, paragraph 1, and article 26 enumerate grounds of discrimination such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Committee has observed that in a number of constitutions and laws not all the grounds on which discrimination is prohibited, as cited in article 2, paragraph 1, are enumerated. The Committee would therefore like to receive information from States parties as to the significance of such omissions.

12. While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.

13. Finally, the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.

B. General comment No. 19 (39) d/, e/ (article 23)

1. Article 23 of the International Covenant on Civil and Political Rights recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Protection of the family and its members is also guaranteed, directly or indirectly, by other provisions of the Covenant. Thus, article 17 establishes a prohibition on arbitrary or unlawful interference with the family. In addition, article 24 of the Covenant specifically addresses the protection of the rights of the child, as such or as a member of a family. In their reports, States parties often fail to give enough information on how the State and society are discharging their obligation to provide protection to the family and the persons composing it.

2. The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition. However, the Committee emphasizes that, when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in article 23. Consequently, States parties should report on how the concept and scope of the family is construed or defined in their own society and legal system. Where diverse concepts of the family, "nuclear" and "extended", exist within a State, this should be indicated with an explanation of the degree of protection afforded to each. In view of the existence of various forms of family, such as unmarried couples and their children or single parents and their children, States parties should also indicate whether and to what extent such types of family and their members are recognized and protected by domestic law and practice.

3. Ensuring the protection provided for under article 23 of the Covenant requires that States parties should adopt legislative, administrative or other measures. States parties should provide detailed information concerning the nature of such measures and the means whereby their effective implementation is assured. In fact, since the Covenant also recognizes the right of the family to protection by society, States parties' reports should indicate how the necessary protection is granted to the family by the State and other social institutions, whether and to what extent the State gives financial or other support to the activities of such institutions, and how it ensures that these activities are compatible with the Covenant.

4. Article 23, paragraph 2, of the Covenant reaffirms the right of men and women of marriageable age to marry and to found a family. Paragraph 3 of the same article provides that no marriage shall be entered into without the free and full consent of the intending spouses. States parties' reports should indicate whether there are restrictions or impediments to the exercise of the right to marry based on special factors such as degree of kinship or mental incapacity. The Covenant does not establish a specific marriageable age either for men or for women, but that age should be such as to enable each of the intending spouses to give his or her free and full personal consent in a form and under conditions prescribed by law. In this connection, the Committee wishes to note that such legal provisions must be compatible with the full exercise of the other rights guaranteed by the Covenant; thus, for instance, the right to freedom of thought, conscience and religion implies that the legislation of each State should provide for the possibility of both religious and civil marriages. In the Committee's view, however, for a State to require that a marriage, which is celebrated in accordance with religious rites, be conducted, affirmed or registered also under civil law is not incompatible with the Covenant. States are also requested to include information on this subject in their reports.

5. The right to found a family implies, in principle, the possibility to procreate and live together. When States parties adopt family planning policies, they should be compatible with the provisions of the Covenant and should, in particular, not be discriminatory or compulsory. Similarly, the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in co-operation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.

6. Article 23, paragraph 4, of the Covenant provides that States parties shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

7. With regard to equality as to marriage, the Committee wishes to note in particular that no sex-based discrimination should occur in respect of the acquisition or loss of nationality by reason of marriage. Likewise, the right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name should be safeguarded.

8. During marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets. Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage.

9. Thus, any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interest of the children in this connection. States parties should, in particular, include information in their reports concerning the provision made for the necessary protection of any children at the dissolution of a marriage or on the separation of the spouses.

Notes

a/ For the nature and purpose of the general comments, see Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII, introduction. For a description of the history of the method of work, the elaboration of general comments and their use, see ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), paras. 541-557. For the text of the general comments already adopted by the Committee, see ibid., Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII; ibid., Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V; ibid., Thirty-eighth Session, Supplement No. 40 (A/38/40), annex VI; ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), annex VI; ibid., Fortieth Session, Supplement No. 40 (A/40/40), annex VI; ibid., Forty-first Session, Supplement No. 40 (A/41/40), annex VI; ibid., Forty-third Session, Supplement No. 40 (A/43/40), annex VI and ibid., Forty-fourth Session, Supplement No. 40 (A/44/40) annex VI. Also issued in documents CCPR/C/21/Rev.1 and CCPR/C/21/Rev.1/Add.1 and 2.

b/ Adopted by the Committee at its 948th meeting (thirty-seventh session), held on 9 November 1989.

c/ The number in parenthesis indicates the session at which the general comment was adopted.

d/ Adopted by the Committee at its 1002nd meeting (thirty-ninth session), held on 24 July 1990.

e/ The number in parenthesis indicates the session at which the general comment was adopted.

ANNEX VII

Letters from the Chairman of the Committee concerning the venue of future sessions

A. Letter dated 27 October 1989 to the Chairmen of the Fifth and Third Committees

I am writing to inform Your Excellency of the views of the Human Rights Committee concerning the ACABQ's proposal (contained in Sections 23.5 and 23.6 of its report to the Fifth Committee, A/44/7) to make reductions, affecting the Human Rights Committee, in the Secretary-General's budget estimates for human rights activities during 1990-1991. The reduction is recommended on the putative grounds that it would be more "cost-effective" and "productive" for the Human Rights Committee to discontinue its long-standing practice of holding one of its three sessions each year at United Nations Headquarters.

The Human Rights Committee does not agree that eliminating the New York venue would be desirable or that the grounds on which the elimination of the New York venue is based are well founded. The Committee is convinced, on the contrary, that such a step would be harmful and would significantly restrict the Committee's effectiveness.

Holding one session in New York each year is not an incidental matter for the Committee but serves important purposes relating to the effective discharge of its mandate under the International Covenant on Civil and Political Rights. That Covenant, which gives treaty force to the civil and political rights proclaimed in the Universal Declaration of Human Rights and to which 88 States have become parties to date, entrusts the Committee, inter alia, with responsibility for monitoring how such rights are actually implemented at the national level. This entails the careful examination, in the presence of the representatives of the States concerned, of periodic reports from States and requires the establishment of an ongoing close and constructive dialogue between the Committee and States parties based on mutual confidence. The possibility for the Committee to meet the representatives of the many States parties which have no permanent missions in Geneva in connection with the fulfilment of their reporting and other obligations under the Covenant is particularly important in the foregoing regard. In March/April 1989, for example, necessary - and very fruitful - contacts were held in New York with representatives of more than 20 States parties.

The Committee also considers it of great importance to maintain regular contacts at Headquarters with members of permanent missions and delegations who are involved in the consideration by the Third Committee of the Committee's annual reports and in the work of the Sixth Committee. In addition, the sessions of the Committee held at Headquarters provide an opportunity for certain States parties, who would find it difficult for financial or administrative reasons to send representatives to Geneva, to present their reports in New York. An added important objective served by the New York venue is the maximization of the impact of the Committee's activities through wider contacts with the world media.

Beyond such substantive considerations, the Committee wishes to note that from the legal standpoint the adoption of the ACABQ's proposal would have the effect of a de facto amendment to article 37 (3) of the Covenant, adopted by General Assembly resolution 2200 (A) (XXI) of 16 December 1966, under which the Committee is authorized to normally hold its sessions at United Nations Headquarters or at the United Nations Office at Geneva. Amendments to the Covenant, in the considered opinion of the members of the Committee, can be made legally only through the procedure laid down in the Covenant itself. In this regard, the Committee has taken note of paragraph 21 of the Final Report of the Secretary-General on the implementation of resolution 41/213 (A/44/222 of 26 April 1989) to the effect that treaty bodies "are not bound by the provisions of the established headquarters principle".

Finally, Mr. Chairman, the Committee wishes to draw attention to the fact that, whereas its spring sessions have been easily accommodated by the permanent staff of the Conference Services at Headquarters, the same would not be the case in Geneva where, we understand, the heavy conference workload would make it necessary that all or nearly all conference servicing staff be hired from the outside on temporary contracts. Thus, while on a theoretical "full cost" basis servicing the Committee's New York meetings may seem more expensive, in actual terms the conference servicing costs in Geneva would almost certainly be significantly higher.

In the light of the foregoing, the Committee is at a loss to understand how the ACABQ came to its conclusions and assumes that it did so without possessing complete and adequate information.

For all of these reasons, the Human Rights Committee is most hopeful that the Fifth Committee will not deprive it of the means to continue to carry out its functions under the Covenant in a manner that has consistently earned it the General Assembly's full approbation and commendation.

Since the work of the Human Rights Committee is of direct interest to the Third Committee, I am also apprising the Chairman of that Committee of the foregoing concerns.

I would be grateful if you would have the present letter circulated as a document of the Fifth Committee.

(*Signed*) Judge Rajsoomer LALLAH
Chairman
Human Rights Committee

B. Letter dated 26 July 1990 to the Chairman of the Committee on Conferences

In its resolution 44/201 of 21 December 1989 the General Assembly, *inter alia*, requested the Human Rights Committee "to take fully into account the recommendations contained in paragraphs 23.5 and 23.6 of the report of the Advisory Committee on Administrative and Budgetary Questions, including the need for optimum use of resources, as well as the provisions of General Assembly resolution 40/243 of 18 December 1985, and article 37 of the International Covenant on Civil and Political Rights, when deciding on the venue of [its] future sessions and to report to the General Assembly at its forty-fifth session through the Committee on Conferences".

The Committee's calendar of meetings for the current biennium was adopted in March 1989 and, following its normal practice, the Committee decided to hold two of its sessions in Geneva and one at Headquarters each year. The Committee will not be considering the calendar of its future meetings until next year. However, in view of the General Assembly's request that the Committee report to it at its forty-fifth session, I am writing now to convey the Committee's views on the question of the venue of its future meetings.

Upon being informed at its thirty-seventh session (October/November 1989) of the recommendations adopted by the Advisory Committee on Administrative and Budgetary Questions which, in effect, would have deprived the Committee in the future of the opportunity to hold its spring meetings at Headquarters, the Committee requested that I write to the Chairman of the Fifth Committee of the General Assembly at its forty-fourth session to inform him of the importance it continued to attach to holding one of its three sessions each year in New York.

As indicated in that letter, holding meetings in New York periodically provides the Committee with the possibility to meet with representatives of States parties to the International Covenant on Civil and Political Rights that have no representation in Geneva, particularly concerning the fulfilment of reporting obligations; to maintain regular contacts with members of Permanent Missions and delegations involved in the work of the Third and Sixth Committees; and to maximize the impact of its activities on public opinion through contacts with non-governmental organizations and the New York-based communications media. Another major advantage of the New York venue is that it provides an opportunity for certain States parties, which find it difficult for financial or administrative reasons to send representatives to Geneva, to present their reports in New York.

With respect to article 37 of the Covenant, the Committee wishes to draw attention to paragraph 3 of that article, which provides that "the Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva". The Committee considers that, from a legal standpoint, the elimination of the New York venue would have the effect of a de facto amendment to that article, whereas such amendments can be made legally only through the procedure laid down in the Covenant itself.

With reference to the provisions of General Assembly resolution 40/243 of 18 December 1985, which the Committee has also been requested to take into account, the Committee notes that the headquarters principle is inapplicable to it as a treaty body. Even if that were not the case, the Committee believes, for the reasons discussed above, that the maintenance of the New York venue for its spring meetings would be amply justified.

For these and other substantive reasons, the Committee was and continues to be of the view that the elimination of the New York venue would be harmful and would significantly restrict its effectiveness.

With specific reference to paragraphs 23.5 and 23.6 of the ACABQ's report contained in document A/44/7, the Committee does not share the view that "if all meetings were held in Geneva substantial financial savings, as well as gains in productivity ... would result". On the contrary, the Committee has reason to believe that, notwithstanding the extra expenses involved in travel to New York of the Committee secretariat, the overall costs to the United Nations may well turn out to be higher if the Committee's spring sessions were held in Geneva. This appears to result from the fact that Geneva has a heavy conference load at that time of the year, which would make it necessary to hire most, if not all, of the required Conference service personnel from outside the Organization on temporary contracts, whereas the Committee's needs for Conference services in the spring have been accommodated in recent years without difficulty by the staff at Headquarters in New York. Even if it were true that the New York venue entailed some extra costs, the slight savings, at best, that could be realized would surely not justify jeopardizing the Committee's effectiveness.

Similarly, the Committee fails to see what "productivity gain" would result from such a step since it is unaware of any advantages offered in that respect by the Geneva venue over New York. Far from leading to productivity gains, the denial of the opportunity for periodic high level contacts with the representatives of States parties at Headquarters, which have been of decisive importance in a considerable number of cases in encouraging compliance with the Covenant or the elimination of the possibility for States desiring to do so to present their reports in New York, would in fact significantly reduce the Committee's ability to discharge adequately its basic mandate of monitoring State party compliance with the Covenant.

However, the Committee is fully aware of the need for economy and has in fact sought, over the last few years, to improve the efficiency of its operations with a view to minimizing costs. During 1989, in particular, it adopted several decisions that will have the effect of increasing significantly the cost-effectiveness of the Committee's operations.

One such measure was to reduce the number of meetings devoted to the consideration of a State party's initial and periodic reports - from three to two and from four to three, respectively. The Committee also agreed that States parties presenting periodic reports should be informed in writing, in advance of their appearance, of the need for brevity in introducing their reports. These measures have enabled the Committee to increase the number of reports considered per session by about 30 per cent and to stay abreast of its growing workload without having to request additional meeting time.

Additionally, the Committee has recently appointed a Special Rapporteur to deal with new communications received in the interim between the sessions of the Committee and has also agreed to authorize its Working Group on Communications to take decisions with respect to the admissibility of complaints submitted under the Optional Protocol to the Covenant. The Committee expects that these measures would enable the Secretariat to meet the servicing needs of Committee meetings in New York with fewer staff members from Geneva than was possible in the past, thereby reducing costs.

On the basis of the information provided above, it is the Committee's earnest hope, Mr. Chairman, that the Committee on Conferences will agree that the Human Rights Committee should continue in the future to hold its spring sessions at Headquarters and that the Committee on Conferences will so recommend to the General Assembly.

(Signed) Judge Rajsoomer LALLAH
Chairman
Human Rights Committee

ANNEX VIII

Study on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations human rights instruments

Comments by the Human Rights Committee

In its resolution 1990/25, the Commission on Human Rights, at its forty-sixth session, decided, inter alia, to invite "the treaty bodies to review the study on possible long-term approaches, to consider which conclusions and recommendations are of relevance to their respective spheres and to send their comments to the Secretary-General". Pursuant to that resolution the Human Rights Committee reviewed the study, contained in document A/44/668, at its thirty-ninth session, held in July 1990. Its comments on the conclusions and recommendations of the study, as contained in the summary of document A/44/668, are provided below:

The Committee agrees that reporting procedures are of central importance to the international human rights régime. At the same time it believes that attention should also be drawn to the vital importance of the domestic procedures used in preparing reports. In particular, it is important, in the process of preparing reports, to take the opportunity to notify as many sectors of the community as possible of the preparation of the report. (Paragraph 2.)

The Committee, bearing in mind its own experience in this regard, supports the suggestion to grant a degree of discretion as to the periodicity of reporting to monitoring bodies to be established under future treaties. It considers that the reporting periodicity should not extend beyond five years. (Paragraph 4.)

While overlapping reporting requirements do pose a problem and should be kept to a minimum, resort by a State Party to simple cross-referencing will not adequately meet the needs of the treaty bodies. The meeting of chairpersons should consider the matter and make recommendations on the subject to the various treaty bodies as to the type of cross-referencing that may be appropriate and acceptable. For this purpose the report of the Secretary-General showing the extent of overlapping of issues dealt with in international instruments of human rights, contained in document HRI/MC/1988/L.3, should be resubmitted to the forthcoming meeting of chairpersons. Consideration could also be given to making that document available to States Parties. Assistance to States Parties in preparing reports, at the national, subregional or regional level, should be a priority area for the United Nations advisory services and technical assistance programme. In addition, the consolidated guidelines for the initial part of State Party reports, as well as the manual being prepared by UNITAR in collaboration with the Centre for Human Rights with a view to assisting States in fulfilling their reporting obligations, should be finalized and made available to the States Parties as soon as possible. (Paragraphs 5 and 6.)

The Committee strongly supports the view that the activities of human rights treaty bodies should be financed through the regular budget of the United Nations. (Paragraphs 8 to 14.)

The Committee agrees that Secretariat staffing levels as well as financial resources to support the activities of the treaty bodies are grossly inadequate, particularly in comparison with the level of support available for activities for which funds are required from other international institutions. If the treaty bodies are to be able to cope successfully with their growing work-loads, such support must clearly be increased. The Committee noted further that despite the importance of human rights which, as the Secretary-General has recognized, played "a crucial role in maintaining the stability of national and international society", the human rights sector was receiving less than 1 per cent of the regular budget of the United Nations. (Paragraph 16.)

The Committee supports the recommendations in paragraph 17. It has been the Committee's practice to provide the delegations with lists of issues shortly before consideration of the report. The Committee also supports the recommendation in paragraph 18.

The Committee considers that its practice of recording observations by members at the conclusion of the consideration of a State Party report has been highly useful both to the Committee and to the States Parties and would accordingly recommend the adoption of a similar practice to other treaty bodies. Ways and means to maximize the impact of such general observations should also be further explored. (Paragraph 19.)

The maximization of normative consistency in respect of human rights standards is clearly desirable. However, owing to the existing staff constraints progress in this respect can only be envisaged over the longer term as increased Secretariat staff resources are made available. (Paragraphs 20 and 21.)

The Committee is satisfied with the format of its annual report but agrees that, to promote greater awareness of the work of the treaty bodies, it might be helpful if the annual reports could be synthesized from time to time and made available in more readable form for distribution to the general public. The Committee also shares the view expressed in the study on the need for giving greater publicity to the work of the treaty bodies, particularly through the United Nations Information Centres. (Paragraph 22.)

Based on its experience, the Committee agrees that the functioning of monitoring bodies would be greatly assisted if the relevant *travaux préparatoires* were made available in accessible form. (Paragraph 29.)

The Committee, while appreciating the concerns voiced in paragraph 168 of the study, is of the view that preference should not be given in the future to non-binding instruments over binding instruments and suggests that whenever possible the supervisory or monitoring functions established under new human rights treaties be assigned to appropriate existing treaty bodies. The Committee considers that some of the existing treaty bodies would have the competence to monitor the implementation of more than one international human rights instrument and agrees that it would be preferable that new instruments were adopted, as far as possible, as protocols to existing instruments. Should such new responsibilities be contemplated, the relevant monitoring bodies should be consulted and appropriate arrangements, including for staff and financial support, be made. (Paragraphs 28, 30, 31, 32 and 33.)

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Litho in United Nations, New York 02000 25031–October 1990–3,950
ISSN 0255-2353